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Jas May Avanghahay Mazda !

Ora et labora for truth, justice and relief.

They who laugh last, laugh most. (*Vide infra p.* 58.)

THE SUKHIA V. JAM-E-JAMSHED ETC. LIBEL SUIT.

SUIT NO. 737 OF 1911 AND APPEAL NO. 20 OF 1912.

Plaintiff's Advocates.	Defendants' Advocates.
Mr. E. B. Raikes,	Mr. D. N. Bahadurji.
The Hon'ble the Advocate-General Mr. T. J. Strangman.	Mr. R. D. N. Wadia.
Mr. J. D. Inverarity.	Mr. D. F. Mulla.
	Mr. J. D. Davar.
	Mr. J. B. Kanga.
	Mr. B. J. Desai.
Attorneys:	Attorneys :
Messrs. Kanga & Sayani.	Messrs. Jehangir G. & Bilimoria.

The **Defamatory** letter*—5½ columns—was published in the issue of the Jam-e-Jamshed dated 28-1-1911 at p. 13. (*vide* the Appeal Paper Book pp. 55-67. For the Manuscript, *vide* pp. 235-251.)

For the libel contained in the said defamatory letter, *vide* para 2 of the Plaint at p. 5.

For the "challenge to sue" para, *vide* foot-note at p. 43.

For the "indemnity" for costs of the defendants 2 and 3 from the defendant 1, *vide* foot-note at p. 11.

Opinion of Mr. E. B. Raikes, M. A., Bar-at-Law.

Counsel is requested to advise the Querist.—(Dr. Sukhia).

Q.—1. Whether the particular paragraph and the whole letter complained of does not apply to the Querist ?

A.—1. I think any ordinary reader would take the paragraph complained of to be meant to apply to Dr. Sukhia.

Q.—2. If so, whether the same is not defamatory of the Querist?

A.—2. I think it is defamatory—unless it can be justified as true in fact.

Q.—3. Assuming Sir Jamsetjee spoke what it is alleged he did are the writer of the letter and the proprietor, publisher and editor of the paper justified in publishing the same ?

A.—3. Not in publishing it at any rate in such a way as to lead the public to believe it was said of Querist. If it was said of

*Before the publication of this letter, there appeared in the Jam-e-Jamshed several writings attacking the plaintiff—Dr. Sukhia—for which he had to send notice on 21st October 1910 to the Editor, asking inspection of the original manuscript writings and the names of the writers, and, in default, warning him that action will be taken against him. The Editor declined through his attorneys Messrs. J. G. & B. to comply with the requisitions. *A long rope was thus offered*, and the defamatory letter in question followed.

Querist it would seem to have been a libel and the writer is responsible for repeating and the proprietor, publisher and editor of the paper for publishing it.

Q.—4. Will the Querist be successful in instituting proceedings on the letter or the particular paragraph in question ?

(*a*) in a Civil Court ?

(*b*) in a Criminal Court and against whom and how they should be prosecuted and whether they should be prosecuted together or separately ?

A.—4. I think he should in the absence of a plea of justification be successful (on the innuendo as to the Querist obtaining the right or power of speaking by threats of breaking up meetings) in either a Civil or Criminal Court. I think having regard to the circumstances of the case it would be more dignified to proceed in a Civil Court and the only difference in the chances of success so far as I see are that in a Criminal Court it would not be a defence to prove the charges true unless it was for the public good that they should be published. As however Querist sets up to be a public man if the things were true it would be held I think that it was for the public good that they should be published.

Q.—5. What evidence is necessary for the Querist to produce in either of the said proceedings ? A.—5. (Not Answered.)

Q.—6. Are the instances stated above and particularly the Querist's denunciation of the trustees' method of patronising the Jam-e-Jamshed sufficient proofs of malice on the part of the proprietor, publisher and editor of the paper ?

A.—6. If the defence of fair comment or protection of mutual interest is raised I think there would be enough evidence of express malice.

Q.—7. Whether there is any other passage in the letter or any other expression or word therein which in the opinion of Counsel has transgressed the limit of fair criticism and ought not to have been used which gives the Querist a right of action ?

A.—7. The whole letter is offensive in tone but I can find nothing distinctly libellous.

Q.—8. Is the Querist entitled to take criminal and civil actions simultaneously or in what order and what proceedings would the Counsel advise the Querist to take ?

A.—8. I think Civil if Querist does not mind the expense. There is no reason both should not go on together.

Q.—9. If the Querist prefers to take Civil proceedings first would he be precluded from taking the Criminal proceedings also in the event of his being successful in Civil proceedings and would Counsel advise the taking of Criminal procedings after the Civil proceedings are over ?

A.—9. I think if Criminal proceedings are to be taken they should be taken first but as I have said I advise Civil proceedings.

Q.—10. Is evidence of what conversation took place between Sir Jamsedji Jejeebhoy on the one hand and the Querist or Mr. Ratnagar or Mr. Murzban on the other, admissible ?

A.—10. Yes, I think, it is.

Q.—11. Does Counsel advise the Querist to send the notice in the first instance to Ratnagar, Mr. J. B. Murzban and Mr. P. J. Murzban calling upon them to withdraw the allegations unconditionally and to pay the Querist's attorney and client costs and calling upon each of them to pay about Rs. 500 or such other sum as Counsel may think fit by way of charity in the name of the Querist to such institution or institutions as the Querist may name ?

A.—11. I think notices should be sent before suit. I should only ask for a **full withdrawal and apology only and cost** in the first instance.

Q.—12. Generally.

A.—12. I have nothing to add. Querist is the best judge as to whether it is worth his while to sue, especially now that he has given up his candidature for the trusteeship.

April 9th 1911. E. B. RAIKES.

Correspondence between the Querist and the 5th Sir Jametji referred to in the Case submitted to the Counsel for opinion :—

Bombay, 17th Februry 1911.

MY DEAR SIR JAMSETJEE.

I regret to trouble you in a personal matter.

I send for your perusal a letter subscribed by one Firoz Ratnagar published in the *Jam-e-Jamshed* of the 28th January last and particularly that portion therein where reference is made to my late esteemed friend and your father.

I was considering for some time as to the steps I should take against all the parties concerned to vindicate my character and reputation against a wicked libel committed both against me and my deceased friend but before doing so I request you to be good enough to inform me at your early convenience :—

1. Whether your father was not to your knowledge my personal friend and admirer ever since 1901 or later on, down to his untimely death.

2. Whether I did not come into direct and constant contact with him on the vital questions affecting our community such as the religious education, the Juddin controversy, the suit against the Trustees of the Parsee Punchayet, the Trustees' notification in 1905 and on the occasions of the Anjuman Meetings of 1903, 1905 and 1908.

3. Whether it is not the fact that since 1903 down to his death he spent hours together with me particularly on Sunday afternoons on matters general and especially those pertaining to our community almost always in your presence and occasionally in the presence of the Dowager Lady Jamsetji.

4. Whether it is not the fact that he used to send for me very frequently by letters, telephonic messages at Wadiaji's, and through Mr. F. J. Parekh to confer with him on matters regarding the religious education, the Juddin controversy, the Punchayet case and the several Anjuman Meetings before the same were held.

5. Whether it is not the fact that some times our conversations regarding the Community matters lasted for hours together and were extended even after dinners till 10 p. m. and even later on two or three occasions.

6. Whether it is not the fact that when you were laid up with chicken-pox at Matheran and when he was also there on a change suffering from slight fever and jaundice he came down to Bombay specially to confer with me on the subject of the Punchayet suit and on the question of retaining certain counsel in London for the intended appeal to the Privy Council and that this happened within a month of his death.

7. Whether it is not the fact that as my friend and admirer he actively but confidentially helped me in my Municipal Elections and even nominated me as a candidate.

8. Whether there is the slightest foundation for the allegation in the said letter that I at any time held out threats to him to stop the proceedings of the Anjuman Meetings and to create disturbances thereat.

9. And, generally, whatever you may have heard him say at any time about me in a depreciatory way as alleged in the correspondence during his conversations with you and family in my absence.

Yours sincerely,

NADIRSHAW H. E. SUKHIA.

MAZGAON CASTLE.

MY DEAR DR. SUKHIA, *Bombay, 1st March* 1911.

Your letter of the 17th ultimo is to hand. I am sorry owing to various reasons I was not able to reply to it earlier. I regret you have thought it necessary to drag my name in a purely personal matter between you and Mr. Phiroze Ratnagar. It is also very painful to us all to see my dear father's name introduced in connection with it. I can only say that your relations with my late father were friendly; and you will pardon me if I here decline to answer the various questions put to me in your letter of the 17th ultimo, as I have no wish to associate myself in a question pertaining to you and Mr. Ratnagar.

I herewith return the copy of the *Jam-e-Jamshed* of the 28th of January enclosed with your above letter. Believe me,

Yours sincerely,

JAMSETJEE JEJEEBHOY.

NOTE.—Notices as advised by the Counsel Mr. Raikes were respectively sent to defendants Nos. 2 and 3 on the 17th April 1911 and to Defendant No. 1 on the 25th April 1911 as the latter was out of Bombay; and as the defendants did not comply with the requisitions made therein, the suit was filed.

THE PLAINT.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

O. O. C. J., Suit No. 737 of 1911.

Nadirshaw Hormazdajee Edalji Sukhia of Bombay, Parsi

Inhabitant, Physician and Municipal Councillor residing at Cowasji Patell Street within the Fort of Bombay.....*Plaintiff.*

Versus.

1. Phiroze Ruttonji Ratnagar also of Bombay Parsee Inhabitant, a share-broker residing at Grant Road without the Fort of Bombay but now in Europe. 2. Jehangir Byramji Murzban of Bombay Parsee Inhabitant, Proprietor of a Gujarati Daily called the *Jam-e-Jamshed*, residing at Hughes Road without the Fort of Bombay and 3. Phirozshaw Jehangir Murzban of Bombay Parsee Inhabitant Editor, Printer and Publisher of the said *Jam-e-Jamshed* residing at Charni Road without the Fort of Bombay...*Defendants.*

THE PLAINTIFF ABOVENAMED STATES AS FOLLOWS:

1. The plaintiff is a member of the Parsi Zoroastrian Community and is in the habit of taking a prominent part in the discussion of matters of interest to the Parsi Zoroastrian Community. The second defendant is the proprietor and the third defendant is the editor, printer and publisher of the Jam-e-Jamshed a well-known paper published in Gujarati at Ballard House, Frere Road, Bombay.

2. By a letter in Gujarati dated the 26th day of January 1911 written to the third defendant for publication in his newspaper the first defendant falsely and maliciously published of the plaintiff the words of which the following is an official translation:—

"But wait: When that gentleman now and then talks about "the late the honourable the fourth Sir Jamsetjee with a "smack of his lips every time, he wants to show some such "thing that that righteous deceased person was Dr. Sukhia's "personal friend and sympathetic admirer. Under the "present circumstances, on being reminded of him, I cannot "resist the temptation of noting down an incident here. At "one time when I was coming down from Matheran with a "party of my certain friends, this noble gentleman met me "on the Narel Station. I asked this gentleman a simple and "direct question as follows:—"Sir, now-a-days whenever meet-"ings of the Anjuman are held, why do men of certain type "only get up to put or to support propositions? Are there "not in the Community more worthy gentlemen and better-"known leading Shethias?" Immediately that frank She-"thiya gave a reply as follows and the sound coming from "the throat of the deceased on that day still rings in my ears. "" What can we do? Ratnagar. If these people are not allow-"ed to speak then they send us threats that they would go to "the meeting and create disturbance (and) would not allow "(its) work to be proceeded with." During the above con-"versation between both of us, my two (or) three friends were "standing at a distance from which they could hear our "conversation and since then on numerous occasions I have "already spoken of this conversation at different places to

"different responsible persons. What I say is quite true and "honest and now I leave it to Dr. Sukhia himself as well as "to my readers as to what conclusion to draw from it. This "much I shall openly say that with regard to the attempts "which Dr. Sukhia continues to make to take a leading part in "almost every meeting of the Anjuman, the thoughtful class of "the Community always puts a question with genuine wonder "as follows :—"What! is our Community barren that mediocre "individuals like Dr. Sukhia continue to come forward in all "matters to take a lead there (*i. e.*) in the meetings ?"

A translation of the said letter is hereto annexed and marked A.

3. By the said words the first defendant meant and intended to suggest to the readers of the said paper that the plaintiff had frequently threatened the late Sir Jamsetjee Jejeebhoy (4th Bart.) and other leaders of the Community concerned in the convening of the Anjuman that he would create disturbances at the Anjuman meetings and would prevent business from being proceeded with therein unless the plaintiff were allowed to make speeches and to take a leading part in the said Anjuman meetings, ~~or~~ ~~that the plaintiff was the kind of person who would do such a thing~~. The plaintiff says that the said imputations relate to him and are a baseless, false and malicious libel on him.

Amended in pursuance of the Court's Order of 25th March 1912.

4. On the 28th day of January 1911 the second and third defendants falsely and maliciously printed and published the said letter in the said newspaper called the Jam-e- Jamshed.

5. In consequence of the said wrongful acts of the defendants the plaintiff has been put to great pain and distress of mind and has suffered very great damage.

6. The Plaintiff writing through his attorneys called upon the defendants to (inter alia) unreservedly withdraw the said imputations made against the plaintiff and to render to him an apology in such terms as might be approved on his behalf for having printed and published the said imputations. The plaintiff further called upon the second and third defendants to give his attorneys inspection of the original manuscript of the said letter appearing over the signature of the first defendant in the issue of the Jam-e-Jamshed of 28th January 1911. The defendants declined to comply with the said requisitions. Copies of the correspondence between the parties are hereto annexed and collectively marked B.

7. The plaintiff will rely on the documents a list whereof is hereto annexed and marked C.

8. The second and third defendants reside and carry on business and the whole cause of action arose in Bombay.

9. The plaintiff accordingly prays :—

(*a*) That the defendants or any of them be ordered to pay to the plaintiff as damages Rs. 9000 or such other sum as to this Honourable Court may seem proper.

(*b*) That the defendants or any of them be ordered to pay the plaintiff's costs.

(c) That the plaintiff may have such further and other relief whether consequential or otherwise as the circumstances of the case may require.

Nadirshaw H. E. Sukhia.

Drawn by E. B. Raikes Esq., Bar-at-law.

THE WRITTEN STATEMENT OF THE FIRST DEFENDANT ABOVENAMED.

1. The statements contained in para 1 of the Plaint are substantially correct.

2. As regards paras 2 and 3 of the Plaint this Defendant without admitting the correctness of the translation as given in the plaint of the words used in the said letter of the 26th of January 1911 or the meaning thereof as alleged says that the said words are no libel, but are a fair comment made in good faith and without malice upon certain matters of public interest viz: the candidature of the Plaintiff for a seat on the Board of Trustees of the Parsee Punchayet for which place the plaintiff had put himself prominently forward and was vigorously canvassing. [**This Defendant says that the statements complained of were published by him on a privileged occasion.**] Amended in pursuance of the Court's Order of the 22nd day of March 1912.

For the words in the said letter complained of by the Plaintiff this Defendant will rely upon the said Gujrathi letter as published in the said Jam-e-Jamshed newspaper when produced.

3. Without prejudice to the above defence this Defendant says that the said words are true in substance and in fact.

4. As regards para 5 of the Plaint this Defendant is advised that by reason of the premises it is not necessary to plead to the allegations contained in the said para.

5. This Defendant admits the statements contained in para 6 of the Plaint so far as they relate to him.

6. This Defendant says that the Plaintiff is not entitled to the reliefs claimed or any part thereof and that this suit should be dismissed with costs.

7. This Defendant will rely upon the documents a list whereof is hereto annexed and marked No. 1. P. R. Ratnagar.

Drawn by:— D. N. Bahadurji Esq., Barrister-at-law.

THE WRITTEN STATEMENT OF THE DEFENDANTS 2 AND 3 ABOVENAMED.

1. The Defendants admit the statements contained in para 1 of the Plaint to be substantially correct.

2. As regards paras 2, 3, and 4 of the Plaint these Defendants without admitting the correctness of the translation as given in the plaint of words used in the said letter of the 26th of January 1911 or the meaning thereof as alleged say that the said words are no libel. The said letter was a fair and honest comment on certain matters of public interest namely the candidature of the Plaintiff for a seat on the Board of Trustees of the Parsee Punchayet for which place the Plaintiff had put himself prominently forward and was vigourously canvassing and was published by these Defendants

Amended in pursuance of the Court's Order of the 22nd day of March 1912.

[on a privileged occasion] *bona fide* for the benefit of the public in the usual course of their business as public journalists and without any malice towards the plaintiff.

For the words in the said letter complained of the Defendants will rely upon the said Gujarati letter as published in the said Jam-e-Jamshed Newspaper when produced.

3. Without prejudice to the above defence the Defendants say that the said words are true in substance and in fact.

4. As regards para 5 of the plaint the Defendants are advised that by reason of the premises it is not necessary to plead to the allegations contained in the said para.

5. The Defendants admit the allegations contained in para 6 of the plaint and say that the Plaintiff was not entitled at that stage to inspect the original manuscript of the said letter.

6. The Defendants say that the Plaintiff is not entitled to the reliefs claimed or any part thereof and that this suit should be dismissed with costs.

7. The Defendants will rely upon the documents a list whereof is hereto annexed and marked No. 1.

Drawn by Jehangir B. Murzban.
Mr. D. N. Bahadurji, Bar-at-Law. Pherozsha J. Murzban.

Opinion of Mr. C. Waley Cohen M. A., Bar-at-Law.

Counsel is requested to advise the plaintiff :—

Q.—1. Whether the passage complained of by the plaintiff and referred to in the plaint is not libellous and, if so, is it protected on the ground of "Fair Comment" on public matters although it is not a comment but an allegation which is untrue?

A.—1. I think it is libellous. So far as there is an allegation of fact—*i.e.*, that Dr. Sukhia threatened he would cause a disturbance if not allowed to take a prominent part in Anjuman meetings, fair comment cannot be urged as a defence unless the statement of fact is true. (1906) 2 K. B. 295; (1909) 1K.B. 250; (1907) 1K.B. 507. If the statement of fact is true then the defence of fair comment is available to protect reasonable deductions from the fact unless there is evidence that the defendants were actuated by malice in fact. (1906) 2 K.B. 638. I think there is substantial extraneous evidence of malice against defendants 2 and 3 and intrinsic evidence of malice against defendant 1. The passage complained of is therefore both libellous and not protected even if the defendants succeed in showing the fact they suggest is true.

Q.—2. If the alleged conversation between the 1st defendant and the late Sir Jamsetjee (4th Bart.) did take place, was the 1st defendant justified in the circumstances in repeating it and were the other defendants justified in publishing it after several years?

A.—2. No. Not in the form adopted in the letter. Sir Jamsetjee mentioned no names—according to the letter—and the insertion of the reference to Dr. Sukhia applies the remarks to Dr. Sukhia in particular—materially adding to what Sir Jamsetjee is alleged to have said.

Q.—3. Can the 1st defendant successfully plead *bonafides* in repeating the said conversation (assuming that it did take place) on the ground that he was bound without further inquiry to believe as true whatever the leader of the Community said?

A.—3. The letter is on the face of it malicious and the 1st defendant cannot in my opinion plead bonafides as a defence. According to the Bombay High Court, Civil actions for libel are governed not by the Criminal Procedure Code but by English. Common Law (5 Bom. 580). The English cases therefore apply and not the Criminal Proceedure Code.

Q.—4. Whether the facts stated above as well as the specimen writings briefed on pp. 65-81 do not afford sufficient proof of malice on the part of the second and third defendants towards the plaintiff?

A.—4. I think they do.

Q.—5. Whether the writing passed by the defendant 1 to the other defendants in the nature of an indemnity bond is not relevant to the inquiry in this suit and if so on what grounds and whether the plaintiff is not entitled to a discovery thereof?

A.—5. I think it is. It is evidence though not conclusive evidence that defendants 2 and 3 considered they were publishing a libel.

Q.—6. Which party will have to lead evidence first? Has the Plaintiff to lead any evidence and if so, on what points and how are the passages showing spite on the part of the defendants 2 and 3 to be proved by the plaintiff if defendants 2 and 3 do not go into the witness box? Is the plaintiff bound to lead any evidence on the question of damages?

A.—6. The onus is primarily on the defendants to prove the comment is fair and then the plaintiff can bring rebutting evidence to prove malice in fact. (1909) 1 K. B. 248. The defendants have admitted publication and it will be for them to prove the truth of the facts they allege and the circumstances on which they rely for the protection of fair comment. No evidence as to damages need be led (*Odgers on Libel and Slander P.* 636), and the falsity of the words complained of is assumed in the plaintiff's favour. (*Odgers on Libel and Slander P.* 686). As to passages proving spite see (7).

Q.—7. Whether the plaintiff should submit interrogatories to the defendants and if so, Counsel is requested to settle and supplement the same briefed on pp. 26-28?

A—7. I think he should but not by way of cross-examination (See 1909 I K. B. 248). I have settled interrogatories. Notice to admit the passages relied on to prove malice should be given. If the defendants admit they were connected as editor or proprietor with the publication of the passages showing spite then no difficulty arises. Otherwise the publication of these passages must be proved by a person who read the passages and the connection of the defendants 2 and 3 with the papers must be proved otherwise. I think the summons should be taken out both for particulars and interrogatories *i. e.* under Order 6, r. 5 and O. XI, r. 1.

Q.—8. Is evidence of what conversation took place between the late Sir Jamsetji Jeejeebhoy on the one hand and the plaintiff or the 1st defendant or the second defendant on the other admissible now that the said Sir Jamsetjee is dead?

A.—8. Evidenee of the fact of Sir Jamsetji having made the statement alleged is admissible. General conversations with Sir Jamsetjee would not be admissible but facts—including the fact of conversations in which Sir Jamsetjee showed hostility or good will to the plaintiff would be admissible. *See* Evidence Act sections 39, 60, 3, 5 and 7.

Q—10. What steps, if any, the plaintiff should take to compel the trustees of the Parsi Punchayet to give inspection of the Correspondence carried on with them by the plaintiff and others in connection with the Anjuman meetings and the religious conference and on which the plaintiff relies.

A—10. The Secretary and Chairman of the Trustees can of course be subpoenaed to produce relevant correspondence. Without seeing the Trust Deed of the Punchayet, I cannot say whether plaintiff is entitled to see the correspondence apart from its relevance in this suit. In any case such right can only be enforced by suit or perhaps by originating summons. See XI Bomb. 1014; 35 I. A. 139.

Q—11. Generally.

A—11. It is usual for the plaintiff in libel actions always to begin (Odgers on Libel and Slander P. 623), and I am of opinion that in the present case Dr. Sukhia should be called at once to give evidence as to his public position, *bonafides* and to prove the innuendo and the falsity of both the suggestion that he sent threatening letters and the innuendo that he falsely held himself out as a friend of Sir Jamshedji. Dr. Sukhia can also give evidence of the pain and general damage he suffered by the libel and of the facts concerning his daughter's death. The plaintiff can withhold his rebutting evidence to prove malice until after the defendants have given their evidence but he cannot give a part of the evidence of malice before and a part after defendants have given evidence. The most advantageous procedure can be decided when the defendants have answered the interrogatories.

21*st December* 1911. C. WALEY COHEN.

Interrogatories administered to defendants 1, and 2 and 3 under Chamber Order (4-1-1912) and Judge's Order (20-1-1912.)

Interrogatories administered to Defendant 1:—

Q—1. What was (1) the precise date and (2) time when the alleged conversation with the late Sir Jamsetji Jijibhai took place between you and him?

A—1. The conversation with the late Sir Jamsetji Jijibhai took place in or about the month of May 1908. This deponent does not remember the exact hour but he believes it was before noon.

Q—2. What are the names of the friends referred to in the said letter who were with you while the alleged conversation between you and Sir Jamsetji took place? Did you make any note of it then and there or at any time thereafter? If so produce it?

A—2. This deponent objects to answer the second interrogatory on the ground that it involves the disclosure of the names of his witnesses. The 2nd and 3rd questions in this interrogatory this deponent answers in the negative.

Q—3. Have you ever contributed writings to any newpaper etc.

A—3. (For answer, *Vide* the Appeal Paper Book pp. 252-253).

Q—4. Did any one render you any assistance in it or did any one inspire the letter? Did you or did any one on your behalf after making the draft show it to any person or persons before the same was published. If so, name them?

A—4. This deponent objects to answer this interrogatory as it is irrelevant.

Q—5. Have you agreed verbally or in writing to indemnify the 2nd and 3rd defendants or either of them against the costs of this suit or any loss or costs they may incur in consequence of the publication of the libel? If such a verbal agreement, name the exact date and place of the making thereof. If an agreement in writing, disclose it?

A—5. This deponent objects to answer this interrogatory as it is irrelevant.

But Answered, When Ordered by the Chamber Judge.

A.—5. In answer to interrogatory No. 5 this deponent annexes hereto marked 'A' copy of a telegram (*see foot-note) dated 26-1-1911 sent by him to deponents 2 and 3 in respect to matters referred to in the said interrogatory.

Q—6. Have you received any indemnity or promise of indemnity from defendant 2 or defendant 3 or a third party against the costs of this suit or any loss or costs you may incur in consequence of the publication of the said libel. If there is any such oral indemnity or promise name the exact date and place when it was made. If in writing, disclose the same?

A—6. This deponent objects to this interrogatory as it is irrelevant.

But Answered, When Ordered by the Chamber Judge.

A—6. This deponent answers this interrogatory in the negative.

Q—7. Give particulars of the occasions when as alleged in the written statement Dr. Sukhia sent threats to or threatened Sir Jamsetji and other leaders of the Anjuman that he would cause disturbance and prevent business from being transacted unless he (the Plaintiff) was allowed to make speeches and take a leading part in the meetings. State whether the alleged threats were verbal or in writing and the exact time and place thereof and to whom they were made?

A—7. This deponent objects to answer this interrogatory on the ground that it involves the disclosure of his evidence in the case.

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*"A."— (Telegrams passed between Murzban and Ratnagar.)
Letter as touched up by Pijam very effective, but suppose Sukhia bothers us legal steps do you undertake pay all expenses, wire reply (Murzban.)
You personally touch, I undertake legal risk for my letter (Phiroze.)

But Answered, When Ordered by the Chamber Judge.

A.—7. The occasions referred to in interrogatory No. 7 of which the deponent is aware at present are the following:—

(*a*) The Anjuman Meeting held in August 1903 at which a Committee was appointed to consider the Juddin question; and

(*b*) The Anjuman Meeting held in April 1905 to consider the report of the said Committee.

This deponent is not aware whether the threats were verbal or in writing nor is he able to give the exact time and place when and where they were held out.

Interrogatories administered to Defendants 2 and 3.

Q—1. Have you not obtained from the 1st defendant a writing or oral agreement or promise to indemnify you and the 3rd defendant or either of you against your costs of this suit or any costs or loss you may incur in consequence of the publication of the said libel? If so, disclose it, if in writing, and if oral give the date and place thereof?

A—1. These deponents object to answer this interrogatory as it is irrelevant.

But Answered, When Ordered by the Chamber Judge.

A.—1. In answer to interrogatory No. 1 these deponents annex hereto marked 'A' copy of a telegram (see foot-note at p. 11.) dated the 26th January 1911 received by them from the 1st defendant in respect to matters referred to in the interrogatory.

Q—2. Who is the real writer of the Gujrati Columns over the signature of Sukhlo Jamas?

A—2. These deponents object to answer this interrogatory as it is irrelevant.

Q—3. Were you the 2nd defendant the proprietor and you the 3rd defendant Editor, Printer and Publisher of the Jam-e-Jamshed during the months January, February, March, April and May 1911?

A—3. These deponents answer this interrogatory in the affirmative.

Q—4. What was the average circulation of the Jam-e-Jamshed during the months of January, February, March and May 1911?

A—4. These deponents say that the circulation of the Jam-e-Jamshed was considerable during the months of January, February, March and May 1911.

Q—5. In whose handwriting is the manuscript letter of the 28th January 1911 complained of and disclosed in your affidavit of documents? If the said letter is not wholly in the handwriting of one person name the persons who wrote each portion and when each portion was written. Under whose instructions were alterations and deletions if any were made and when were they inserted?

A—5. These deponents object to answer this interrogatory on the ground that it is irrelevant at this stage.

Q.—6. When exactly was the said manuscript received by you? Was the said manuscript, when received by you, in its present condition?

A.—6. These deponents say that the manuscript was received shortly before its publication and the same was not in its present state.

Q.—7. Was the print of the libel complained of made from the said manuscript; if not state from what document the print was made?

A—7. These deponents answer this interrogatory in the affirmative.

Q.—8. By whom were the following articles written? (The Headings specified). Give the names of composers?

A.—8. These deponents say that they are not bound to answer this interrogatory as it is irrelevant.

Q.—9. Give particulars of the occasions when as alleged by you in your written statement Dr. Sukhia sent threats to or threatened Sir Jamsetji and other leaders of the Anjuman that he would cause disturbance and prevent business from being transacted unless he the Plaintiff was allowed to make speeches and take a leading part in the meetings. State whether the alleged threats were verbal or in writing and the exact time and place thereof and to whom they were made?

A.—9. These deponents object to answer this interrogatory as it involves the disclosure of their evidence in the case.

But Answered, When Ordered by the Chamber Judge.

A.—9. The occasions referred to in interrogatory No. 9 of which these deponents are aware at present are the following:—

(*a*) The Anjuman Meeting held in August 1903 at which a Committee was appointed to consider the Juddin question; and

(*b*) The Anjuman Meeting held in April 1905 to consider the report of the said Committee.

These deponents are not aware whether the threats were verbal or in writing nor are they able to give the exact time and place when and where they were held out.

Q.—10. Were you the 3rd defendant the Editor of a Paper called Gup-Sup during the months of February, March and May 1911?

A.—10. Answer to this interrogatory is in the affirmative.

AUTHORITIES CITED IN THE SUIT No. 737 of 1911.

Mr. Raikes for the Plaintiff:—

On Issue 1.—See Odgers 5 ed. pp. 23 and 27 and Ch II p. 16; and C. P. C. O 18 r 1.

On Cross-examination of the plaintiff on general reputation, see (1882) 8 Q. B. D. 491 *Scott V. Sampson*; and (1888) 21 Q. B. D. 501 *Wood V. Earl of Durham.*

How *libel* must be *justified*,—(1894) A. C. 57, 65 *Makin V. Attorney General for New South Wales.*

The *repeated libel* must be justified as much as the original one.—Odgers 5 ed. p. 178.

In an action for libel it is no plea, that the defendant had the libellous statement from another and upon publication disclosed the author's name—(1829) 5 Bing. 392, 402 *De Crepigny V. Wellesley.*

Supposing a fair comment is established, *proof of malice* can take a criticism out of "fair Comment."—(1906) 2 K. B. 627 *Thomas V. Bradbury & Co. Ltd.*

The defendants ought not to be allowed to go into evidence of general reputation.—C. P. C. O 8 r 2.

On damages.—

Odgers 5 ed. p. 353; and (1892) 2 Q. B. 524 *Ratcliffe V. Evans.*

In theory the law imputes some damage and it is not uncommon in practice for the plaintiff to satisfy himself with proving the libel, and then leaving the defendant to justify if he can without the plaintiff being called *i. e.* the plaintiff is under no obligation to go into the box till the defendants have begun on the ground of justification.—(1882) 8 Q. B. D. 491 *Scott V. Sampson*; (1824) 3 B. and C. 427 *Tripp V. Thomas,* in which no evidence was led and the plaintiff got substantial damages; and Halsbury p. 718.

By the Court—Beaman J.: that in all actions in which the plaintiff claims damages, he ought to begin.—(1845) 5 Q. B. 447 *Mercer V. Whall.*

Mr. Wadia for defendant No. 1 and **Mr. Davar** for defendants Nos. 2 and 3.

On Issue 1.—Taylor on Evidence, p. 296; Roscoe on Evidence, 285; (1845) 5 Q. B. 447 *Mercer V. Whall.*

On Justification.—(1888) 21 Q. B. D. 41 *Wood V. Earl of Durham*; and (1888) 4 Times L. R. 515 *Wood V. Cox.*

In mitigation of Damages by giving the name of the libeller 6 C. and P. 588; Exhibit 10.

In support of the plea of *privileged occasion.*—36 Cal. 883; 14 Cal. Weekly Notes, *Lajputrai V. The Englishman*; (1872) L. R. 4 P. C. 495 *Laughton V. The Bishop of Sodor and Man*; (1909) 2 K. B. 958 *Mangena V. Wright.*; 23 Q. B. D. 400 *Albutt V. Council of Medical Education and Registration*; and (1874) L. R. 9 C. P. 396 Davis V. Duncan, (Russel on Crimes 6th ed); and *re qualified privilege.*—37 Cal. 730; L. R. Privy Council A. C. Vol. 4; and C. P. C. O 6 r 17.

Newspaper is the proper channel.—Bishop's Crim. Law (1892) Vol. 2 p. 937; (1891) 2 Q. B. 341 *Stuart and Bell*; (1891) A. C. 73 *Jenorae V. Delmeye*; and Halsbury Vol. 18 p. 686, paras 1263-64.

Mr. Raikes.—Did not comment on the American cases cited by the Defendants' Counsel as the Court did not want to hear him on those cases.

The Court.—As to the defendants' fair comment and the plaintiff's general conduct——

(1) That he, as a Judge, cannot treat a bald statement of fact as comment, fair or unfair, though the Jury may decide it otherwise.—(1873) 28 L. T. 472 *Odger* V. *Mortimer.*

(2) That the consideration of the general conduct of the plaintiff in estimating the amount of damages he is fairly entitled to is a very proper matter for a Court to consider.—(1866) L. R. 1 Q. B. 686 *Kelly V. Sherlock*; (1824) 3 B. and C. 113 *May V. Brown*; (1865) 34 L. J. M. C. 57 *Queen V. Rowton*; (1889) 5 T. R. 272 *Wood. V. Cox*; and Section 14 of the Ind. Evi. Act.

Issues raised in Suit No. 737 of 1911.

22nd March 1912. **Coram Beaman J.**

By **Mr. Wadia** for defendant No. 1:—

1. Whether the words complained of and mentioned in paras 2, 3 of the plaint are defamatory?

2. Whether, if so, the words were not uttered by Sir Jamsetji Jeejibhoy in the circumstances mentioned in the letter of January 26th 1911?

Struck out— 3. Whether if Issue 2 is found in the affirmative the said communication was not privileged or made on a privileged occasion?

4. Whether the letter of 26th January 1911 containing the words complained of was not published on a privileged occasion?

5. Whether the said words are not true in substance and in fact?

6. Whether the plaintiff is entitled to any damages and if so what?

By **Mr. Davar** for defendants Nos. 2 and 3, who joins in all those issues Nos. 1 to 6 and adds:—

7. Whether the defendants 2, 3 acted towards the plaintiff with express malice?

Mr. Raikes for the plaintiff:—

Do they abandon their defence of fair comment?

Mr. Wadia.—No. And adds:—

8. Whether the said words are not fair comment on a matter of public interest, namely, the candidature of the plaintiff for a seat on the Board of Trustees of the Parsi Panchayet?

Mr. Raikes.—Issue 3 had better go out; it is clearly irrelevant.—**(It was struck out)**; and raises

9. Whether if Issues 4, 8 be answered in the affirmative the words complained of were not published of the plaintiff from express malice on the part of the defendants 1, 2, 3, or any and which of them?

The Court.—This makes Issue 7 superfluous and indeed it ought not to have been raised by the defendants 2, 3.

(28th March 1912). By **Mr. Wadia and Mr. Davar**:—

10. Whether the Plaintiff's reputation is not such that by reason of the alleged libel he has not sustained any damage?

The Court *held.*—**Issues** 1, 2 and 6 in the affirmative, 3 and 7 cancelled and 4, 5, 8, 9 and 10 in the negative.

Eight Particulars (*vide* Ap. Bk. pp 302—3) and an amended one (*vide infra p.* 17.) were put in at a later stage, respectively on the 28th and 29th March 1912, by way of justification and in mitigation of damages by the defendants' Counsel.

The Court rejected all **the Particulars** (*vide infra p.* 20.) except Nos. 5 and 7 which were already furnished to the

plaintiff in answer to Interrogatories (*vide supra*, Nos. 7 and 9 at *pp.* 12-13.), and remarked "I wish to make it clear now, and I hope it will be kept clear throughout the remainder of the case, that there is a broad distinction between justification and evidence of general reputation given in mitigation of damages..... I do hope that the learned gentlemen who are in charge of the three defendants' cases will keep clearly in mind the distinction between evidence of general reputation and evidence drawn from particular instances intended to show that the tendency of the Plaintiff's nature or his general disposition was such that he would have been likely to do the act he is alleged to have done and which he complains of as being a libel."

On 25th March 1912 the Plaintiff was cross-examined by Mr. J. D. Davar as to his connection with Narioshang Dhaval,* when the plaintiff said as follows :—

"I do not claim to be descended from Narioshang Dhaval . . . I knew very well that Narioshang Dhaval was not my ancestor. I said that I belonged to the priestly caste, of which he was the ancestor."

In support of the plaintiff's evidence the following appears in the Ex. No. 4 (p. 181 of the Ap. Bk.) put in by the defendants themselves :—

(Extract from the plaintiff's lecture delivered on 17th January 1911). "In respect of family I may say that your servant who is standing before you is a true 'Pucca Athornan' a direct lineal descendant of an athornan *like* Narioshang Dhaval."

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* For the erudition of the Counsel and others—particularly the Behedins (the aity) who in certain religious and social matters are considered, as a class, not equal to the "Athornans" (the priestly class) and, therefore, from time immemorial, more or less debarred from participating in them—is given below the plaintiff's pedigree which has been since 1905 published—during the Juddin Controversy.

The Plaintiff-Dr. Sukhia's Pedigree.

Ervad Sheriar (said to have been a direct descendant of Asho Prophet Zoroaster.)

Ervad Shapur

Ervad Ramiar	(Brothers)	Ervad Dhaval
Ervad Hamjiar	(Cousins)	Ervad Narioshang

Ervad Mobed	Ervad Shapur
Ervad Jarthost	Osta Beheman
Ervad Kâmdin	Ervad Burjor
Ervad Mobed	Osta Manocher
Ervad Kâmdin	Ervad Dada (*Sukhiaji*)
Ervad Râna	Ervad Edal
Ervad Chândna	Ervad Behram
Ervad Anna	Ervad Dadabhoy
Ervad Kâhannâ	Osta Edalji
Osta Kadwâ	Ervad Ahuramazdaji
Osta Nariman	Ervad Nadirshaw.
Ervad Chândâ	

On the Sixth Day of the hearing (29th March 1912) there was a suggestion from the Court for an arrangement between the parties but it was not adopted.

The Suggestion from the Court on 29th March 1912, the sixth day of the hearing.

The Court.—To Mr. Davar.—Do you think there is any possibility of this matter being arranged between the parties? It seems to me the matter is not of great importance. I don't know if Mr. Raikes would care. Good deal of feeling will be caused in the Community.

Mr. Raikes—No suggestion is made to me yet. If an apology is given my client would consider it.

The Court.—I suggested this owing to the restricted nature of the action. I made this suggestion as if the suit goes on.

Mr Davar.—We do not propose to give an apology.

The Court.—If it came to the form.

Mr. Wadia.—My client never knew Dr. Sukhia and had no intention to do any injury to him. He thought he was only doing his duty.

Mr. Davar.—I shall welcome any suggestion that falls from the Court, I have to call a very large body of evidence.

Mr. Wadia.—There are about 20 witnesses.

Mr. Raikes—You will allow me to confer with my client. Dr. Sukhia, as I anticipated, will not settle **except upon a full apology and withdrawal of allegations and costs.**

Amended particular tendered on behalf of the defendants and admitted by the Court on 29th March 1912:—

"During the conduct of the Punchayet suit the Plaintiff insisted upon his evidence being given at the hearing thereof. The attorneys and Counsel of the Defendants in the said suit thought the Plaintiff's evidence was unnecessary but as the late Sir Jamsetjee Jejeebhoy who was one of the Defendants in the said suit was very much pressed by the Plaintiff, the former remarked "For God's sake let his evidence be taken, otherwise he will excite the mob against us" or used words to that effect. Thereafter the Plaintiff was examined."

In support of the above **Particular** the Defendants called Mr. F. M. Wacha, solicitor, then an Assistant in the office of Messrs. Craigie, Lynch and Owen, as a witness, but, *unfortunately*, he was not allowed by the Court to be so examined.

N. B.—The following **ducumentary** evidence in rebuttal to contradict the Defendants and Mr. Wacha was ready:—

1. The Witness-Summons dated 14th February 1908 to the Plaintiff to attend personally and to give evidence on 6th April 1908 and thereafter in the suit No. 689 of 1906 from the office of Messrs. C. L. & Owen, attorneys for the defendants—the Panchayet Trustees.
2. —Correspondence between the Office of the Panchayet Trustees and the Plaintiff dated 29th, 30th and 31st March 1908 requesting him to give evidence. (*Vide infra p.* 18.)

3.—A letter from the Plaintiff's then attorneys—Messrs. N. H. & Co. to Messrs. C. L. & Owen dated 7th April 1908 submitting his proofs of evidence in the said suit No. 689 of 1906.

Besides, the plaintiff was already cross-examined on the point as follows :—

Q.—If Wacha swears that Sir Jamsetji Jejeebhoy said "For God's sake let this man's evidence be taken for the sake of peace etc." If Wacha swore all that, would that be true or false?

A.—I would say that that was untrue.

Correspondence referred to above in No. 2 item.

No. 405 of 1908. The Office of the Trustees of the Parsi Panchayet Funds and Properties. Bombay, 29th March 1908.

Seth Dr Nadirshaw H. E. Sukhia.

Sir, You have previously contributed more than Rs. 500 to the funds in charge of the trustees of the Parsee Punchayet Funds and Properties. You will come and kindly give evidence in the suit at present pending against the trustees of the Parsi Punchayet as to what you meant by the word Zoroastrian at the time of making this donation. For whose benefit did you make this donation? Was it to give it to converts in addition to those who are by birth Parsees and by religion Zoroastrians. Your servant,

Jivanji Jamshedji Modi, Secretary.

Sukhia Buildings, Fort, Bombay 30th March 1908.

The Secretary of the Parsi Punchayet Trust Funds and Properties.

Sir, I state in reply to your letter of the 29th March 1908 that if my evidence is absolutely necessary and if you will sub-poena me I shall give my evidence as to the true facts. This is undoubtedly the fact, that whatever sums I have given small or great to the Parsi Zarthoshti Religious Institutions I have given the same for the benefit only of Parsi Zoroastrians that is to say I have given for the benefit only of Parsees by birth and Zoroastrians by religion. Your servant,

Nadirshaw H. E. Sukhia.

Bombay 31st March 1908.

Dr. Nadirshaw H. E. Sukhia, Bombay.

Sir, You have kindly consented to give evidence as requested in my letter of the 29th March 1908 in reference to which I take liberty to inform you that you have subscribed to the funds on the following date. I mention this to refresh your memory in case you are asked about it. I have enclosed a printed letter for the sum which you had sent with your letter of 21st June 1897 for the funds for giving help to maintain the blind, maimed and helpless Zoroastrians of Bombay. Your servant,

Jivanji Jamshedji Modi, Secretary.

LIST OF WITNESSES.

Note :—Beaman J. says in his Judgment " it is true that the witnesses called on his (the Plaintiff's) behalf were, at least, as good, if not better than those called for the defendants. "

Plaintiff's Witnesses (*called*)	‡Defendants' Witnesses (*called*)
1 The Hon'ble Mr. Manmohandas Ramji.	1 Mr. M. P. Kharegat. (*Retired Civilian and once acted as a High Court Judge*).
2 Mr. Cursetji N. Wadia.	2 Mr. Jehangir B. Petit.
3 Mr. Byramji R. B. Jeejibhoy.	3 Mr. S. B. Kapadia(*Pleader.*)
4 Mr. Fardunji A. C. Fardunji.	4 Mr. P. H. Dastur (*2nd Presidency Magistrate*).
(*Subpoenas issued but found not necessary to be called.*)	5 Mr. H. A. Wadia. (*Trustee and Bar-at-law*).
5 The Hon. Mr. Chimanlal H. Setalvad.	6 Dr. M. P. Kharegat. (*Retired Lt.-Col. I. M. S.*)
6 Mr. J. Hall.	7 Mr. Shapurji Jiwaji.
7 *The Hon'ble Sir Jamsetjee Jejeebhoy, Bart.	8 Mr. M. M. Murzban (*Bar-at-law.*)
8 The Hon'ble Mr. Abdool Hoosein Adamji Peerbhoy.	9 § Mr. Sorabji E. Warden.
9 Mr. Cowasji Jehangir (Jr.)	10 Mr. Jamsetji A. Wadia.
10 Mr. Dhanjibhoy B. Petit.	11 § Dr. J. J. Kharsedji (Lilaoonvala).
11 Mr. Merwanji M. Banaji	12 Mr. Nusserwanji Sorabji Jamsetji Jeejeebhoy.
12 Mr. Nuswanji C. Pastakia.	13 Dr. H. M. Masina.
13 Mr. Burjorji N. Gamat.	14 Mr. K. D. Moos, (*Sub-Editor, Jam-e-Jamshed*).
14 Mr. Fardunji D. Paruck.	(*Called but disallowed.*†)
15 Mr. J. M. Cursetjee.	15 Mr. F. M. Wacha. (*Solicitor*).
16 Mr. Sorab Pestanji.	†(*vide supra* pp. 17-18 & Ap. Bk. p. 166.)
17 Mr. Aderji B. Shroff.	
18 Mr. Rustom N. Vatchagandhi.	
19 Mr. Jehangir Bhicaji Bulsara.	
20 Mr. Ratansha E. Cohiar	

‡ Note :—The Counsel for the Defendants said :— " I have many more witnesses. But if this won't do it's no use calling more."

§ Note :—These very witnesses, soon after their evidence, requested the plaintiff to help them at a Joint Stock Co. Meeting.

***Note :—Proofs of Evidence of the Hon'ble Sir Jamsetjee Jejeebhoy Bart.**

My father and the plaintiff were in general agreement on questions affecting the Parsi Community in Juddin matters so far as I am aware. Dr. Sukhia had several interviews with my father at our residence for some years before he died on those questions and took tea with him. I was present at some of these. At end of February or beginning of March 1905 he dined with my father. So far as I could see, they both used to agree in general on the topics under discussion. Generally speaking their relations were friendly. I read the letter complained of. When I read the words put into my father's mouth, in connection with the rest of the letter I understood that the writer of the letter intended to apply them to Dr. Sukhia though in my opinion it was unlikely my father could have meant to refer to Dr. Sukhia and I was

surprised at this. I was also surprised at the attempt made in the letter to show that Dr. Sukhia's relations with my father were anything but friendly. To my knowledge the 1st defendant never came to see my father or was at all on such terms of friendship or even acquaintance as to say the words he is alleged to have said to a person in the position of the 1st defendant. If Dr. Sukhia said anywhere that my father was a personal friend of Dr. Sukhia and sympathised with him it would not strike me as strange or untrue. My father used to help him at Municipal elections and Standing Committee election. My father was the last man to acknowledge or plead helplessness as is implied in the words.

Judgment.

Beaman J. *held* in his judgment—(Fully published in the Ap. Bk. pp. 304-334 and the Bo.-Law Reporter Vol. XV No. 3 pp. 133-159 :—

1. That the Particulars Nos. 1, 2, 3, 4, 6, 8 and the amended one are obnoxious to the objection and would not do either under the head of justification or under the head of general reputation in mitigation of damages. (*Vide* Sec. 55 of the Ind: Evi: Act, which affirms this principle).
2. That the occasion is not privileged.
3. That there is no evidence of justification.
4. That the evidence as to character or reputation seems to be of little or no value.
5. That the plea of fair comment is out of the way as the libel is an allegation of fact and not a pure comment.
6. Issues 1 and 2 in the affirmative.
   Issues 3 and 7 cancelled.
   Issues 4, 5, 8, 9 and 10 in the negative.
   Issue 6, One Rupee.
7. Both sides to bear their own costs.

N. B.—The following **documentary** evidence in rebuttal against allegations made against the Plaintiff in the **Particulars** tendered on behalf of the Defendants was, *inter alia*, ready :—

Note.—This with other Proceedings about occurrences in the Corporation was stopped by the Court. (*vide* Appeal Paper Book p. 48 ls. 8 and 9).

(1).—Opinion of the Advocate-General the Hon'ble Mr. (now Sir) Basil Scott *re* Religious Conference.

Counsel is requested to advise on the following points.—

Q. 1.—Whether the Chairman (Mr. Cama) of the meeting of 16th June was entitled (*a*) to declare the amendment out of order; (*b*) to dissolve the Conference or even that day's meeting without taking the sense of the meeting as requested?

A. 1.—In my opinion he acted *improperly* in disallowing discussion at the adjourned meeting of the amendment which he had allowed to be discussed without objection at the first meeting. I think also that under the circumstances he acted *improperly* in dissolving the meeting and in purporting to dissolve the Conference.

Q. 2.—Whether the querists' and the majority's action of continuing the meeting after Mr. Cama's departure on the said

day continued the meeting of that day and kept alive the existence of the Conference especially when their action has been approved by the public meeting of 1st July?

A. 2.—I do not think that the Conference was properly dissolved. It has still to adopt or reject the report of its committee and thereafter if necessary to submit the scheme for approval to the Parsi Community.

Q. 3.—Is the Conference dissolved in any sense?

A. 3.—I do not think so.

Q. 4.—If the Conference is dissolved who is entitled to the funds since the Mandli or New Society is not in existence even through a provisional Committee? If the Conference is not dissolved, (*a*) who is entitled to the funds? (*b*) who can call a meeting of the Conference?

A. 4.—The funds have been subscribed in anticipation of the formation of a Mandli by the Conference with the approval of the Parsi Community on the recommendations of the Committee on that behalf. If such a Mandli is formed the subscriptions may be funded with the Parsi Panchayet according to the recommendations of the Committee and may be used for the purposes of religious Education according to the vote of the Conference and the Parsi Community. If however such a Mandli is not formed the subscribers will have the right to take back their subscriptions or direct the application of them in any manner they please. I think the majority of the persons present at the meeting of the Conference when Mr. Cama left it can meet together as the Conference and proceed with the discussion of the committee's recommendations.

Q. 5.—If Mr. Cama refuses, is the chairman of the continued meeting of the 15th June after Mr. Cama left entitled to call meetings of the Conference? If so, is he entitled to the papers and vouchers of the conference?

A. 5.—If the majority in favour of continuing the Conference so desire I think this substituted Chairman may call a meeting and that meeting may by resolution direct that the papers should be handed to him.

Q. 6.—Does Counsel advise querists to file a suit? If so, in what form, against whom, whether in their own names, to compel Mr. Cama or Mr. Mody under the Specific Relief Act to call another meeting of the Conference or under Section 539 of the Civil Procedure Code?

A. 6.—I think a suit may be filed by subscribers who are also members of the Conference on behalf of themselves and all other members of the Conference against Messrs. Cama and Mody to restrain them from dealing with any funds in the hands of them or one of them subscribed in consequence of recommendations by the Committee appointed by the Conference until the report of the Committee has been adopted by the Conference and the scheme therein recommended approved by the Parsi Community. Declarations may also be prayed for that the amendment was improperly ruled out of order and that the meeting of the Conference

was improperly dissolved by Mr. Kama and the plaintiff may pray for an order that Mr. Kama or some one to be appointed by the Court do summon a fresh meeting of the Conference to consider the report of the Committee. Advertisements must be issued under Section 30 of the Code with the leave of the Court.

Q. 7.—If a suit is to be filed having regard to the correspondence are the Trustees of the Parsi Panchayet necessary parties to the suit? (*Vide* letter of 10th July.)

A. 7.—I think not as there appears to have none of the subscriptions in their possession.

Q. 8.—Are the subscribers still the owners in any sense of their subscriptions, so as to entitle them to interfere with the disposition of the fund?

A. 8.—See Answer 4.

Q. 9.—Is the subscribers' meeting called on the 21st legitimate as it is called without authority of any legally constituted Body?

A. 9.—I think it will deal with the subscriptions at its peril till the decision of the Conference and the Community as to the Committee's recommendation has been come to.

Q. 10.—If the meeting is not legal can it be prevented? If so how?

A. 10.—I do not think it need be prevented. The subscriptions can be followed if they are misapplied.

Q. 11.—Is Mr. Mody right in refusing to accept further subscriptions and thus preventing intending voters to come in? If not, what remedy have they got? Can they on payment of the subscriptions at the door on the 21st insist upon joining the meeting?

A. 11.—I think Mr. Mody may accept or refuse subscriptions as he pleases as he has no authority in the matter until the recommendations of the Committee are adopted. The subscriptions are in my opinion merely anticipatory or conditional. Mr. Mody will be very ill-advised if he disposes of any moneys come to his hands until the questions in dispute are finally settled . .

20-7-1902. B. SCOTT.

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(2).—**Opinion of Sir Ralph Littler, K.C.B., K. C.**, regarding an *ultra vires* Resolution of the Bombay Municipal Corporation passed by a majority against the Querist (Dr. Sukhia), published in their Proceedings of 1st July 1907.

Counsel's opinion is asked on the following points:—

Q.—1 (*a*) Is the resolution null and void for having been moved without giving notice of the same, in short, is it *ultra vires*?

A.—1 (*a*) I think the resolution is absolutely *ultra vires*.

Q.—1 (*b*) If null and void or *ultra vires*, will the Courts interfere to give the relief sought, or can the Courts decline to interfere on the ground that the want of notice is a *mere irregularity* which can be cured, considering the majority approve of the resolution?

A.—1 (*b*) See answer to (*d*).

Q.—1 (*c*) Does this case of want of notice of business fall within the rule of Foss *v.* Harbottle, and other allied cases?

A.—1 (*c*) See answer to (*d*).

Q.—1 (*d*) Has the Querist 'acquiesed' in the procedure without notice, or 'waived' his right to notice by speaking and voting against the proposition or by moving his amendment?

A.—1 (*d*) I think he has; for he has himself dealt with it as a mere irregularity.

Q.—1 (*e*) If he has acquiesed or waived is he disentitled to the relief sought?

A.—1 (*e*) I fear he is absolutely disentitled even were the Court otherwise willing to interfere which is doubtful when no loss of office or pecuniary damage can be shown.

Q.—II. Has the Corporation power to pass a vote of censure on a Councillor even with due formalities?

A.—II. I think certainly yes.

Q.—III. If the Corporation has power, has that power been *properly or justifiably* exercised in the present instance, looking to the wordings of Querist's said notices of motions (Ex. C.)

A.—III. The wording of the motions by Dr. Sukhia, though strong, in no way justified the vote of censure and especially the passing of it as a substantive motion before Dr. Sukhia's motion had been debated. The record of the voting though technically accurate was hardly a fair record of the fact.

Q.—III (*b*) If improperly exercised, is the Querist entitled to the relief sought in the present instance?

A.—III (*b*) See I (*d*).

Q.—And *generally*.

A.—Dr. Sukhia certainly seems to have been treated anything but impartially. In the first place the President (Mr. Dinsha E. Wacha) was not only irregular but unfair (if he did not adopt the usual practice) when he did not permit the recording of the withdrawn minute amongst the proceedings of the 6th March 1902. This action is the more reprehensible as it prevented an authentic record being kept of the views of a minority.

But the first difficulty here arises, for the President has under the Standing Orders remarkable powers, for example, he can (S. O. 11) adjourn a meeting which is usually not within a Chairman's rights—Sloughton *v.* Reynols, 2 Str., 1045; Natl. Dwellings Society *v.* Sykes, 1894, 3 Ch., 159. He can refuse to accept a withdrawal of a motion (S. O. 15). This is usually the right of the meeting, for example, School Board for London S. O. 15, but the most drastic of all is Standing Order 9 which provides that the Chairman *shall* (not may) decide summarily all points of order or procedure. I cannot think this is intended to give him unrestrained control of what shall or shall not appear on the minutes, but unfortunately it does give him absolute power to rule on what is or is not in order and hence although he (Mr. Mulji) was **flagrantly wrong** in holding Dr. Sukhia's notice of motion out of order on the 12th May, still as it was a point of order he is irresponsible and above and beyond correction.

Again the proceedings of the 3rd November appear to be deliberately and wilfully recorded in a manner contrary to fact. The statement that Dr. Sukhia appeared to be trifling with the

Corporation is certainly under any circumstances an improper one to place on the minutes and was evidently done as a **piece of spite**.

As regards the meeting of the 12th January the irregularity was of the gravest.

The President (Mr. Mulji B. Barbhaya) declined to rule the proposals out of order (although he had no such scruples on a previous occasion) and had he done so there would have been, as I have shown, no appeal. It was therefore his duty to have called on Dr. Sukhia to move his resolutions and leave them to the Corporation to deal with, but instead of that a resolution in the handwriting of the Secretary (Mr. M. N. Wadia) is moved before the items had been debated, that the items be not entered in the minutes of the proceedings. This might have been permissible as an amendment, but it was a singularly irregular and improper proceeding to move this, as a substantive motion—non-constat—that Dr. Sukhia's motion would not be carried.

The resolution No. 2 (Sir P. M. Mehta's) was even more irregular and improper; for notice ought clearly to have been given of it, for of all motions for which there should be notice to every Corporator, a vote of censure is surely the one. The Corporation has no doubt the right to pass such a vote with respect to a Corporator's conduct in relation to his Corporate duties just as it is competent to pass a vote of confidence in the President and indeed Dr. Sukhia's proposed motion amounts pretty nearly to a censure on the President as worded. It however appears abundantly plain that the so-called aspersions on his fairness were **absolutely true**, but unfortunately the questions were on the points of order, and I am clearly of opinion that Dr. Sukhia by debating the merits lost his opportunity and cannot now reopen matters. As regards Dr. Sukhia's Resolution there is not the **slightest** justification for proposing a vote of censure on him in respect of them.

He sought a constitutional way to raise an issue of treatment which seemed to him and **seems to me irregular and unfair** and was exercising his undoubted rights and performing his duties to his constituents, but I think under the circumstances it would be hopeless to appeal to the Court.

Q.—Counsel is respectfully requested to quote cases on various points.

A.—It necessarily follows from the foregoing that cases need not be cited, but I may say that my opinion is founded on many years' experience of the practice of Parliament and from my own personal experience for the last fifteen years as Chairman of the most important County Council in England (other than London.)

Temple, 4th September 1903. RALPH LITTLER.

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(3).—Opinion of Mr. J. D. Inverarity.

Counsel is requested to advise the querist (Dr. Sukhia) who has to fight on public grounds against heavy odds for no advantage to himself but to future Councillors of independence and to the rate-payers :—

Q.—1. Whether in view of Rule 9 of the Corporation Procedure Rules supposing it to be consistent with the provisions of

section 36, the powers of a President of the Municipal Corporation of Bombay on a point of order are absolute?

A.—1. I am of opinion that they are absolute but that the ruling can be challenged on a subsequent occasion and I think if the President (Dr. A. G. Viegas) ruled that such a challenge was out of order he would be **wrong** as that question is not a point of order at all.

Q.—2. If so, whether his powers under the Rule are also absolute when the question discussed before him affect or challenge his own rulings and whether the President can sit in judgment on his own actions *i. e.* when his own rulings are challenged?

A.—2. I think such a question when the validity of the previous order is raised could not be ruled out on a point of order as in my opinion the President cannot wrongly decide a question is on point of order when it is not. I think the President can sit in judgment on a question in which he is interested as the Act provides that he shall be Chairman whenever he is present and the rule that no one shall be a Judge in his own cause is subject to the qualification that he can be if there is a statutory authority directing him to act as there is here. There is no exception that he shall not preside where he has an interest. It would be **better taste** for him to absent himself on such occasions but if he is present he is bound to be Chairman.

Q.—3. Whether the querist can obtain redress by a suit in the High Court and, if so, in what circumstances and whether Sec. 45 of the Specific Relief Act would apply to his case?

A.—3. The querist in my opinion has no remedy or under Section 45 of the Specific Relief Act against the President. If the rules are *ultra vires* he may have some remedy against the Corporation but I am generally retained for that body and therefore can not advise against them.

Q.—4. If so, against whom must the suit be filed and what should be the nature of the suit?

A.—4. See Answer 3.

Q.—5. Whether the President has power summarily to decline to amend the minutes if they are not fair and correct?

A.—5. The Act does not say that the minutes are to be fairly drawn; they are to be drawn up and fairly entered. This Section 36, cl. O. seems to have been taken from 5 & C. W. 4, c. 76, sec. 69, and I think the word "fairly" merely refers to the fair copy to be made in the Minute Book of what is drawn up. I also don't think it means that every thing that took place should be in the minutes, *though I certainly think if a proposition is moved and negatived as not being in order this should be entered.* Some of the querist's motions don't appear to have been in the form of propositions. Rule 3 only appears to refer to portions of the *minutes* being erroneously entered, not portions of the *proceedings* and does not seem to me to refer to *omission* but to actual mis-statements in the entry. I am of opinion that Rule 3 is *ultra vires* as the powers of the Corporation to regulate the management of their business is conferred by Sect. 36 and as clause

(*q*) provides how questions are to be decided. I think the Corporation cannot make a rule that they are to be decided otherwise.

Q.—6. If he has no such powers, what is the querist's remedy to get them amended?

A.—6. The querist I think has no remedy under Section 45. *See* Reg. *vs.* Mayor of Evesham. 8. A and E p. 266. The Court would not in my opinion order the Municipal Secretary to make entries in the Minute Book which to be valid under the Act require to be entered and signed by the President at the next meeting. I also think the omissions complained of are innocuous and do not harm any one. The querist if it is ever material to prove what actually took place *can* do so and there is no provision that I can see which makes the minute conclusive evidence that nothing else but what is entered took place. I also think no suit lies to compel the Municipal Secretary to amend the minutes.

Q.—7. *Whether it was not the querist's duty as a public servant to bring to the notice of the Councillors the contents of the anonymous letter in the way he did and was he not justified in doing so?*

A.—7. I think it was his duty and I consider his conduct was **quite proper.**

Q.—8. and 9. If a vote of censure was unjustifiably passed, has the querist a remedy against it? Can he (*a*) bring a suit for defamation or take criminal proceedings; or (*b*) proceed under the Specific Relief Act? If so, against whom the proceedings should be taken?

A.—8. It is impossible to advise on an abstract question like this. I don't think criminal proceedings would lie. Whether a civil suit would lie against any one who defamed the querist orally or in writing would depend upon whether there was malice or whether the occasion was privileged and if so whether the privilege was abused—questions which cannot be answered except upon a concrete case.

Q.—10. Are the rules 3, 9 and 15 not inconsistent with the provisions of Sec. 36 clauses (*k*), (*o*) and (*q*) and whether rule 15 is proper, considering the usual right of withdrawal of a proposition to be that of the meeting and not of the President?

A.—10. In my opinion these rules are inconsistent with the provisions of Sec. 36 cl. K., Q. and Q.

Rule 15, I think, is contrary to Section 36 cl. q. It may be a convenient rule but it appears to me to be contrary to Sec. 36 cl. q.

Q.—11. If so, what is the remedy of the querist to have them amended in case the Corporation decline to do so by a majority?

A.—11. If the querist has any remedy it is against the Corporation against whom I cannot advise.

Q.—12. Generally.

A.—12. I should not advise litigation on the rulings complaned of. They do not appear to me to be matters of sufficient importance.

January 12th, 1907. J. D. INVERARITY.

Joint opinion of Mr. Macpherson and Mr. Inverarity referred to in the case submitted by the querist to Mr. Inverarity for his opinion.

Q.—Whether the Corporation are concluded by such ruling (of the President) or not?

A.—The Corporation are *not* concluded by such ruling if it is incorrect. Application should be made to the High Court under Section 45 of the Specific Relief Act for an order compelling the President to perform his duty and put the proposition if it was in fact a proper one.

JOHN MACPERSON.
September 2nd 1895. J. D. INVERARITY.

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(4).—Letter of Regret.
No. 903 of 1908.

Offices of the Trustees of the Parsi Punchayet Funds and Properties. 131, Hornby Road. *Bombay, 17th September* 1908.

To Dr. NADIRSHAW HORMUSJI SUKHIA, L. M. & S.,
Sir, BOMBAY.

With reference to your letter, dated 15th September 1908, I am directed by the Trustees to give you the following reply :—

* * * * * *

My Trustees do not believe that any one at the meeting could have supposed that anything said at the meeting, either by the Chairman (Mr. Bomanji D. Petit) or by me as Secretary-(Mr. now Dr.-J. J. Mody), could possibly have been intended to cast or could have been understood by any one as casting any reflection on your character. But, if, by chance there was even one person only who did so understand it, *my Trustees one and all and I myself also have no objection whatever to say that they regret* that any such misunderstanding should have arisen, as there was certainly no intention whatever, either on their part or on mine as Secretary, to cast any reflection upon you of any kind.

Yours faithfully,
JIVANJI JAMSHEDJI MODI, *Secretary.*

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(5).—Joint Opinion of Messrs. Inverarity & Lowndes.

The contention and arguments of Dr. Sukhia on the one hand and the views of the President (The Hon'ble Mr. G. O. W. Dunn) on the other hand are set out in Dr. Sukhia's memorandum and in the Secretary's letter No. 6583 of 20th January 1909, and we (the Municipal Solicitors) do not see that we can throw any additional light on the subject.

Counsel is requested to advise the President.

Q—1. Whether in the particular case he was or was not within his rights in excluding Dr. Sukhia's notice of motion of the 21st December 1908 from the Agenda.

A—1. In our opinion the authority of the President is confined to the Meeting over which he is presiding. He has, we think, power at such Meeting to rule that any particular motion of which notice may have been given, is out of order, and to refuse to allow it to be discussed at the Meeting, if he is of opinion that it has no relation to the Municipal government of the City. We are however of opinion that the President has no power to direct the Municipal Secretary before the Meeting to strike

out or omit from the Agenda any motion of which notice has been given by a Councillor.

Q—2. Whether the President has any discretion or power in such matters, and if not whether he, or the Municipal Secretary is under an obligation to include in the notice under clause (*j*) or in a supplementary announcement under clause (*k*) of Section 36 any and every notice of motion which any Councillor may choose to give.

A—2. We think that the Municipal Secretary is under an obligation to include in the Agenda every notice of motion given by a Councillor unless it is on the face of it defamatory or otherwise obviously objectionable.

And to advise generally. We have nothing to add.
J. D. INVERARITY.

22*nd March*.1909. G. R. LOWNDES.

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(6).—Opinion of Mr. G. R. Lowndes.

Counsel is now requested to advise.

Q.—1. Whether the President (Mr. Jaffer Rahimtoola)'s ruling complained of by Dr. Sukhia was correct?

A.—1. The only provision of the Municipal Act by which Dr. Sukhia's proposal for the erection of the Statue could be justified, appears to be S. 63 (*k*) which enables the Corporation to provide for "any measure likely to promote public . . . instruction." Whether or no any particular measure, for which it is proposed that the Corporation should provide under this subsection, is likely to promote public instruction, is, in my opinion, a question of fact to be decided by the Corporation itself. The words of the subsection are very wide, and are entitled, in my opinion, to a liberal interpretation, and though I do not myself think that the erection of the proposed Statue would be likely to have this effect, I am not prepared to advise, as a matter of law, that the proposal is so clearly outside the scope of the subsection that the President was justified in withdrawing it from the consideration of Councillors. For this reason I am of opinion that the ruling of the President that para. 2 of Dr. Sukhia's amendment was not within the purview of S. 63 of the Municipal Act and consequently was out of order was not correct. He ought in my opinion to have left the matter to the decision of the Councillors.

Q.—2. Whether in view of the provisions of the Municipal Act (and in particular S. 63) is it legally competent to the Corporation to sanction a suitable grant of money for the purpose stated in paragraph 2 of the amendment proposed by Dr. Sukhia to Mr. D. E. Wacha's Motion (see p. 346 of the print of proceedings)?

A.—2. In my opinion it is legally competent to the Corporation to sanction the proposed grant if the majority should be bona-fide of opinion that the erection of the Statue would be likely to promote public instruction.

And to advise generally. I have nothing to add.
17th November 1909. G. R. LOWNDES.

CERTIFIED COPY OF DECREE OF 12-4-1912, FILED ON 11-6-1912.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

O. O. C. J., Suit No. 737 of 1911. Coram Beaman J.
George V. etc.

N. H. E. Sukhia.....*Plaintiff.*

Versus.

P. R. Ratnagar, J. B. Murzban and P. J. Murzban.....*Defendants.*

The Plaintiff prays that the defendants or any of them be ordered to pay to the plaintiff as damages Rupees nine thousand as mentioned in the Plaint herein or such other sum as to this Hon'ble Court may seem proper and for costs and for further and other relief and the Suit having been called on for hearing and final disposal on the twenty second, the twenty third, the twenty fifth, the twenty sixth, the twenty eighth, the twenty ninth and the thirtieth days of March last and on the first, the second, the ninth and the eleventh days of April instant and on this day the plaintiff the first defendant Phiroze Ruttonji Ratnagar and the second and the third defendants Jehangir Byramji Murzban and Phirozshaw Jehangir Murzban appearing respectively by Advocates and upon framing issues hearing evidence and perusing exhibits THIS COURT doth pass judgment for the plaintiff and doth order and decree that the defendants do pay to the Plaintiff the sum of Rupee one as and by way of damages for the libel complained of by the plaintiff mentioned in the Plaint herein and this Court doth further order that each party herein do bear and pay his and their own respective costs of this suit WITNESS SIR BASIL SCOTT Knight Chief Justice at Bombay aforesaid this twelfth day of April one thousand nine hundred and twelve.

Seal. P. B. Malabari. By the Court

The 11th day of June 1912. A. M. Kajiji, Prothonotary.

Certified to be a true copy, the 11th day of June 1912.

P. B. Malabari for Prothonotary.

Note.—MEMORANDUM OF APPEAL by the Appellant—Plaintiff and **Cross-Objections** by the Respondents—Defendants published in the Ap. Bk. at pp. 338-343 and 344-347 are fully embodied in the Decree of the Appeal Court (*vide infra, pp.* 43-48).

The Plaintiff Appealed. Appeal No. 20 of 1912.

6—1—13 Coram The Chief Justice and Chandavarkar J.

Mr. Raikes.—Two imputations are made against the character of the plaintiff *viz.*,—(1) that the plaintiff obtained the privilege of moving and seconding propositions at the meetings of the Parsi Anjuman by sending threats to the Trustees who convened those meetings; and (2) that he professed to be a greater friend of the late sir Jamsetji than he really had been; and they both reflect great discredit on the Plaintiff's character and are clearly libellous. The libel is circulated broad-cast indiscriminately. The Defendants failed to tender an **apology** for the alleged statements though called upon to do so. They have persisted in the

plea of justification throughout the trial and misconducted themselves by putting several offensive questions to the plaintiff while being cross-examined. There was a direct challenge thrown at the plaintiff to bring an action and the defendants Nos. 2 and 3 were guaranteed their costs and the libel was published after great deliberation. For all that, substantial or aggravated damages the plaintiff is entitled to. Besides, the plaintiff is unjustly deprived of his costs by the lower Court. Unless it is proved that the libel was so trivial that no action ought to have been instituted or the plaintiff was a man of no character or there was a misconduct of the case on his behalf, then only he can be deprived of his costs.

Mr. Kanga for Respondent No. 1:—Submitted the pleas of "justification," "fair comment" and "privilege" and that the libel, was no libel, and if any it was so trivial as would not carry costs and there was no excessive publication. The defendant No. I had an *interest* and a "*social duty*" to perform in writing the letter, and moreover the plaintiff provoked the libel. The Appeal Court ought not to interfere with the discretion exercised by the Lower Court as to the quantum of damages and as to costs.

Mr. Davar for Defendants Nos. 2 and 3. :—Pleaded justification, fair comment and privilege.

Mr. Raikes, who was heard in reply only on the question of damages and costs, argued that if the plaintiff recovers even nominal damages for which there is no fixed amount, it may be one Farthing, he must get his costs. If the right of the plaintiff is infringed, he must get nominal damages and costs. The Court of Appeal will interfere where there is no point on which the Lower Court could have exercised its discretion. As to the alleged provocation of the libel, the plaintiff never attacked defendant No. 1 who unnecessarily came forward to attack the plaintiff. The libel relied on by the defendant on the part of the plaintiff in mitigation must relate to the same subject and the plaintiff's conduct towards persons other than the defendants should not be taken into account in awarding damages. **Judgment Reserved.** (*vide pp.* 35-43.)

Authorities cited in the Appeal No. 20 of 1912.

APPEAL NO. 20 OF 1912.

Mr. Raikes.—Every libel imports damage and the defamed person is entitled to at least nominal damages and cost:—(1863) 3F. and F. 421, 430. *Campbell V. Spottishwoode*; and (1905)A. C. 115 Watt *V. Watt.*

When a libel is circulated indiscriminately or broad-cast in a newspaper heavy damages should be awarded:— [(1829) 5 Bing. 392, 402. *DeCrepigny V. Wellesley*; Odgers, 5th ed, p.p. 375, 392; Halsbury's Laws of England, Vol X, P. 324; Vol. XVIII, Sec. 596.]

Persistence in the plea of justification must enhance damages:— [Odgers, 5th ed. p. 393; (1844) 12 M. and W. 507. *Warwick V. Foulkes*; (1845) 7 Q. B. 68. *Wilson V. Robinson*; and (1848) 12 Q. B. 511 *Simpson V. Robinson.*]

The conduct of the case on behalf of the defendants was such as to entitle the plaintiff to aggravated damages. The Counsel put several offensive questions to the plaintiff irrelevant to the inquiry in the course of his cross-examination. Notice should have been given if the plaintiff's character was to be attacked. This fact also aggravates damages and the plaintiff is entitled to get more than nominal damages :— [(1868) 18 L. T. 615, *Risk Allah Bey V. Whitehurst*; (1905) A. C. 115, 118, *Watt V. Watt*.]

Evidence of *general* reputation in question of damages and in mitigation of damages is different from evidence drawn from particular instances.—(1882) 8 Q. B. D. 491 *Scott V. Sampson* ; (1888) 21 Q. B. D. 501 *Wood V. Earl of Durham* ; and Section 55 of the Indian Evidence Act.

If the libel was so trivial that no action ought to have been brought or the plaintiff was a man of no character or there was misconduct in the conduct of the suit, *then only* he can be deprived of his costs :—[Odgers, 5th ed. pp. 441,442 ; (1882) 8 Q. B. D. 491. *Scott V. Sampson*; (1888) 21 Q. B. D. 501. *Wood V. Earl of Durham* ; (1884) 13 Q. B. D. 262, 268. *Jones V. Curling*; (1893) 1 Q. B. 564, 567. *Forster V. Farquhar*; (1880) 15 Ch. D. 501,504. *Cooper V. Whittingham* ; (1893) 68 L. T. 146, 148. *O'Connor V. The Star Newspaper Company, Limited*; (1903) 2 K. B. 432, 444. *Rex V. Parke* ; (1910) A. C. 20 E. *Hulton and Co. V. Jones*; (1882) 7 App. Cas. 741. *Capital and Counties Bank V. Henty* ; (1866) L. R. 1. Q. B. 686. *Kelly V. Sherlock*; and (1873) 28 L. T. 472. *Odger V. Mortimer*.]

By Mr. Kanga for defendant No. I.

As to "**privilege**":—Halsbury's Laws of England, Vol XVIII, p. 688 (foot note); Odgers, 5th ed. p. 249 ; (1891) 2 Q. B. 341, 346. *Stuart V. Bell*.

As to "**interests**" of the defendant :—(1885)1 T. L. R. 412. *Wisdom V. Brown*; (1879) 41 L. T. 588. *Botterill V. Whytehead*; (1891) 2 Q. B. 189, 191. *Hunt V. Great Northern Railway Co.*; (1834) 1 C. M. and R. 181. *Toogood V. Spyring*; and (1909) 2 K. B. 958. *Mangena V. Wright*.

As to "**Duty**" :—(1855) 5 E. and B. 344. *Harrison V. Bush*; (1846) 2 C. B. 569. *Coxhead V. Richards*; (1870) L. R. 5 Q. B. 608, 611. *Davies V. Snead*; (1891) 2 Q. B. 341. *Stuart V. Bell*; (1872) L. R. 4 P. C. 495, 504. *Laughton V. The Bishop of Sodor and Man*; (1891) A. C. 73. *Jenoure V. Delmege*.

As to "**Fair Comment**":—(1873) 28 L. T. 472. *Odger V. Mortimer* ; (1865) L. R. 1 Q. B. 699. *Kelly V. Tinling* ; (1862)3 F. and F. 372, 377. *Seymour V. Butterworth* ; (1874) L. R. 9C. P. 396. *Davis V. Duncan* ; (1909) 2 K. B. 958. *Mangena V. Wright*.

There was no **excessive publication** as the Jam-e-Jamshed was the only reasonable medium through which the Parsi public could be approached and because it was read by non-Parsis the "privilege" was not lost :—[Halsbury's Laws of England, Vol. XVIII, p. 686 ; (1885) 1 T. L. R. 412. *Wisdom V. Brown*; (1909) 2 K. B. 958. *Mangena V. Wright*; (1879) 41 L. T. 588. *Botterill V. Whytehead*.]

If the main publication is protected, then any minor publication is equally priviledged :—Halsbury's Laws of England, Vol. XVIII, p.p. 691, 692; Odgers, 5th ed. p. 302; (1907) 1 K. B. 371 *Edmondson V. Birch and Co. Ltd.*; (1903) 6 Bom. L. R. 131, 154. *Jehangir V. Secretary of State.*

As to "**particular medium**" chosen :—

If a particular medium is chosen by the plaintiff for attack, *viz.*, the press, he has no right to complain if he gets reply through the same channel :—(1859) 1 F. & F. 608. *Hibbs V. Wilkinson*; and (1872) L. R. 4 P. C. 495 *Laughton V. The Bishop of Sodor & Man.*

The **admissibility of the statement of a dead person** (Sir J J's.) :—S. 32, Cl. (3) and S. 158 of the Indian Evidence Act.

As to "**mitigation of damages**" :—

The defendant has given the name of his informant and this fact should go towards mitigation of damages :—(1834) 6 C. & P. 588. *Bennett V. Bennett*; (1843) 5 M. & Gr. 700 *Pearson V. Lematire*; and Odgers, 5 ed. p. 394.

The fact of the **Provocation of the libel** by the plaintiff's lectures should go in mitigation of damages. See Halsbury's Laws of England, Vol XVIII. p. 726.

Persistence in the plea of justification gives rises to aggravated damages, but it is so if the plea is false to the knowledge of the defendant :—Halsbury's Laws of England Vol. XVIII pp. 718 & 723; Taylor on Evidence, Vol I., p. 268 (foot note); and (1848) 12 Q. B. 511. *Simpson V. Robinson.*

Offensive questions put in Cross-examination aggravate damages (1868) 18 L. T. 615 *Risk Allah Bey V. Whitehurst*, but they were in fact directed to contradict some of the plaintiff's statements in his lectures.

As to "**costs**" :—The full discretion rests with the Court hearing the suit :—S. 35 of the Civil Procedure Code ; and (1900) 2 Bom. L. R. 254. *Parshram V. Dorabji.* No costs, where the action ought not to have been brought if the libel is so trivial :—(1889) 5 T. L. R. 272, *Wood V. Cox*; (1885) 1 T. L. R. 497. *Cooke V. Broyden & Co.*; and *Odgers* 5th ed. p. 374.

By Mr. Davar for defendants Nos. 2 and 3 :—

(1835) 7 C. & P. 395 *Tarpley V. Blaby*; (1837) 7 A. & E. 223 *Watts V. Fraser*; (1886) L. R. 1 Q. B. 686,698. *Kelly V. Sherlock*; (1885) 1 T. L. R. 497. *Cooke V. Brogden*; and (1891) 2 Q. B. 189. *Hunt V. Great Northern Railway Company.*

Mr. Raikes in reply :—

Mr. Raikes, who was asked not to reply on pleas of Justification, Privilege and Fair Comment but, only, on the questions of **damages and costs**, cited further Authorities :—

If the plaintiff recovers nominal damages, which may be one farthing, he must get his costs :—(1900) A. C. 113, 116. *Owners of Steamship "Mediana" V. Owners, Master and Crew of Lightship "Comet."*

In *Parshram V. Dorabji* (1900) 2 Bom. L. R. 254, it was a case of a declaratory decree and the plaintiff was not

entitled to the decree and the defendant therein did not object to the plaintiff's taking the decree.

When the order of costs was erroneous it was varied by the Court of Appeal :—(1892) I. L. R. 16 Bom. 676, *Ranchordas Vithaldas V. Bai Kasi.*

In *Khushal V. Punamchand* [(1897) I. L. R. 22 Bom. 164] the Appeal Court upheld the order of costs as it held that the Division Court was bound to dismiss the suit.

In *Cooke V. Brogden & Co.* [(1885) 1 T. L. R. 497] the plaintiff was a man of no character and the case entirely turned on the small excess of the privilege.

In further support of his contention, Mr. Raikes referred to (1882) 8 Q. B. D. 491 Scott V. Sampson ; (1888) 21 Q. B. D. 501 *Wood V. The Earl of Durham* ; and (1889) 5 T. L. R. 272 *Wood V. Cox.*]

As to **Mitigation of Damages**: —

In mitigation of damages it was argued that the libel was provoked by the plaintiff. But the plaintiff never attacked defendant No. 1. Defendant No. 1 came forward unnecessarily to attack the plaintiff and if the attack fails it ought to recoil on the maker. *Vide* (1882) 8 Q. B. D. 491. 496. *Scott V. Sampson.* Attack by the plaintiff must be the cause of the rejoinder,—(1866) L. R. 1 Q. B. 686. 697. *Kelly V. Sherlock* ; & (1824) 3 B. & Cr. 113. *May V. Brown.*

By the Appeal Court :—

As to "**privilege and fair comments**" :—(1903) 72 L. J. K. B. 612 and (1903) 2 K. B. 100, 112. *McQuire V. Western Morning News Company* ; (1908) 2 K. B. 309, 320. *Hunt V. Star Newspaper Company, Limited* ; and (1886) 11 App. Cas. 187, 190 *Davis V. Shepstone.* As to 'privilege' it must be shown that the defendants had an interest or a moral or social duty in respect of it to a person or persons having a correlative interest or duty, and as to 'fair comment' it must be too clearly borne in mind that there is a distinction between comment or criticism and allegations of fact. It is one thing to comment upon or criticise, even with severity, the acknowledged or proved acts of a public man and quite another to assert that he has been guilty of particular acts of misconduct.

It is open to any body to comment fairly on facts which are *true* as regards a matter of public interest, but *if any allegation of fact* imputing any act or acts of misconduct is made *the libel is out of the sphere of fair comment* and can be justified only on the ground that the allegation is true.—(1903) 2. K. B. 100, 112 *McQuire V. Western Morning News Co.*; (1908) 2 K. B. 309, 320 *Hunt V. Star Newspaper Co. Ltd.*; and (1886) 11 App. Cas. 187, 191 *Davis V. Shepstone.*

As to the "**statement of a deceased person.**" :—(1836) L. R. 3 I. A. 154 *Sri Raghunadha V. Sri Brozo Kishoro,* in which the Privy Council held that it was *prima facie* open to suspicion, because incapable of contradiction by the deceased by reason of his death.

As to "**Justification**" of the libel :—

It should be proved as true in substance and in fact by proving its truth, not the truth of other acts and occasions, having nothing to do with the libel, unless the specific acts of misconduct charged in the libel having been proved, it was intended to show *further* that those acts were part of the habitual and intentional, not accidental, conduct of the appellant:—*Vide* S. 15 of the I. E. Act; (1894) A. C. 57, 65 *Makin V. Attorney General for New South Wales.* No such question was raised at the trial nor could it be raised with due regard to the nature of the libel and the pleadings in the case.

As to "**damages**":—The rule of law is "if the case be one of libel—whether on a person, firm, or a company—the law is that *the damages are at large.* It is not necessary to prove any particular damage; the jury may give such damages as they think fit, having regard to the conduct of the parties respectively and all the circumstances of the case." *Per Esher M. R. in South Hetton Coal Company V. North Eastern News Association* (1894) 1 Q. B. 133, 139.

The Appeal Court *held*:—

1:—That the imputations *amounted to libel.*

2:—That the statements were *not privileged* because they were published in a newspaper read by the public at large and not confined to the Parsis only and it cannot be said of the present libel that it was communicated by the defendants having an interest or a moral or social duty in respect of it only to a person or persons having a correlative interest or duty when they published the libel to the public at large, instead of confining it to the Members of the Parsi Community.

3:—That the plea of *fair comment* on a matter of public interest was *out of the way,* as what was charged as libel was not comment but an allegation of fact and as such the libel was out of the sphere of fair comment and could be justified only on the ground that the allegation was true.

4:—That the statements were *not justified* as being true in substance and in fact. That Sir Jamsetji's statement was *not admissible in evidence,* being that of a deceased person which was *prima facie* open to suspicion because incapable of contradiction by the deceased by reason of his death and this uncertainty gained when documentary evidence in the case showed that the late Sir Jamsetji was more or less on terms of friendship with the appellant, and that therefore there was no evidence at all in justification of the truth of the libel in substance and in fact.

5:—That the Respondents not only persisted throughout in their plea of justification but they also subjected the Appellant to a severe cross-examination by means of *offensive questions* reflecting on his honesty and *that without any basis of fact.*

6 :—That *instances* of acts of the plaintiff more or less closely *resembling the particular act* of misconduct imputed to the Appellant (Plaintiff) in the libellous statement were *not admissible in evidence.* The Defendants must justify the libel as true in substance and in fact by proving *its* truth, not the truth of other acts and occasions having nothing to do with the one in question.

7 :—That Beaman J's findings of fact, so far as they rested on proved evidence, were in Appellant's favour; so far as they went against him, the findings and reasoning were more or less *speculative and conjectural.*

8 :—That the Appellant had been challenged by the Respondents to sue, if he dared; he sued and won: and they must pay his costs; and that this was certainly not a case for contemptuous damages as awarded by the Lower Court.

9 :—That there was found *no misconduct* in and with reference to the suit itself *against the plaintiff—Appellant* and he was therefore *entitled to nominal damages* (award of Rs. 200) *and costs* of both the Appeal and the Lower Courts.

JUDGMENT OF THE APPEAL COURT.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

O. O. C. J. Appeal No. 20 of 1912. Suit No. 737 of 1911.

20th January 1913, Coram Scott C. J. and Chandavarkar J.

George V. etc.

N. H. E. Sukhia—*Appellant and Plaintiff vs.* P. R. Ratnagar, J. B. Murzban and P. J. Murzban— *Respondents and Defendants.*

JUDGMENT.

CHANDAVARKAR J. The suit, out of which this appeal arises, was an action for damages for libel instituted by the appellant NadirshawSukhia, a Veterinary Surgeon, against the three defendants, the 1st of whom, Phiroze Ruttonji Ratnagar, was a frequent contributor to the columns of a daily newspaper, called the *Jam-e-Jamshed*, published in Gujarati in Bombay, and the 2nd and the 3rd defendants are its Proprietor and Editor, Printer and Publisher respectively. All the parties belong to the Parsi Zoroastrian Community. The libel complained of is contained in a letter written by the 1st defendant and published in the *Jam-e-Jamshed* of the 28th of January 1911. That libel was charged as containing two distinct imputations on the character of the appellant, (1) that he had obtained the privilege of being called on to move or second propositions at the meetings of the Parsi Anjuman by sending to the trustees of the Parsi Panchayet, who convened those meetings, threats that if he were not allowed to move or second the propositions he would create disturbance at the meetings, and, secondly, that the appellant had boasted in certain lectures delivered by him of being a greater friend of the late Sir Jamsetjee Jeejibhoy, the 4th Parsi Baronet of that name, than he (the appellant) really had been.

The pleas advanced in defence by the three defendants were that the statements in the letter charged as defamatory were not

libellous, that, if they were, they were justified as being true in substance and in fact, that they were protected by privilege, and that they were fair comment on a matter of public interest.

The action was tried by Beaman J., who held that the words complained of were defamatory, that the defendants had failed on the pleas of justification, privilege, and fair comment; but he awarded one rupee as damages to the appellant, and ordered each party to bear his own costs upon the ground that "the published charge, having regard to what Dr. Sukhia had told us of himself and his mental attitude towards his opponents in public life," did not express "anything which would materially injure or lower his reputation as a public man by the statement that he threatened Sir Jamsetjee that if not allowed to speak he would create a disturbance."

From that judgment this appeal has been preferred; and the respondents, defendants in the Court below, have filed cross objections, maintaining that the learned Judge should have held their defence proved on all or any of their pleas of justification, privilege, and fair comment, and dismissed the suit with costs.

In support of the appeal it has been urged by the appellant's Counsel, Mr. Raikes, that this was a case, not, as held by Beaman J., for contemptuous, but for, at least, nominal damages, because the libel held proved had been published in a largely circulated newspaper, **with the deliberate object of preventing the appellant's election to the office of Trustee of the Parsi Charitable Funds, at the trial the plea of justification had been persisted in by the respondents in ignorance of the facts, and the appellant had been subjected to a vexatious and insulting cross-examination with reference to his general character and conduct.**

It will be convenient to deal at the outset with the cross-objections of the respondents, since if good they go to the root of the whole case. In urging them, Mr. Kanga, Counsel for the 1st respondent, sought to argue that the statements charged as libel, taken by themselves, were no libel at all; but as this was not a ground of the cross-objections but was raised at the hearing of the appeal, the Court declined to allow it to be raised and to permit the respondents to amend their cross-objections. So the questions argued in support of the cross-objections are three: (1) Whether the respondents have justified the truth of the libel in substance and fact, (2) if they have not, whether they are protected by privilege, and (3) if they are not so protected, whether the statements charged as libellous are fair comment on a matter of public interest.

The circumstances under which the libel complained of came to be published may be briefly stated.

As a result of what is called the *Juddin* case, which, in 1908, excited great commotion in the Parsi Zoroastrian Community, and which was decided by a Division Bench of this Court, consisting of Davar and Beaman JJ., Davar J. framed a scheme for the election of Trustees for the Parsi Charitable funds, which aggregate over a crore of rupees. The first elections under that scheme were settled to take place in March 1911. Before the

period of the elections, the appellant, who had taken a prominent part in the *Juddin* case, contributed an article to the columns of a Parsi daily newspaper published in Gujarati and circulated among other classes besides Parsis, an article over his own signature, criticising the conduct of the Parsee Trustees in consenting to certain details of the scheme without consulting the Parsi Anjuman. The appellant came forward in January 1911 as a candidate for election to the office of trustee. He convened meetings of the Parsi Community to hear his addresses in furtherance of his candidature and the candidature of others whom he supported; he advertised those meetings in the newspapers; he invited the reporters of some newspapers to the meetings with a view to the publication therein of his lectures; he wrote a letter (Ext. 8) to the Editor of the *Sanj Vartaman* saying that he proposed giving lectures to "lay before the public much which it is worth the while of our (Parsi) community to know." He also wrote to the 2nd respondent, proprietor of the *Jam-e-Jamshed*, a letter (Ext. 1) informing him of the lectures intended to be given and requesting him to report them fully "in his newspaper" as the matter is of public importance and much affecting our community." In another letter (Ext. 3) the appellant requested the 2nd respondent to send his reporter to report his lectures in the *Jam-e-Jamshed*.

Three lectures were accordingly delivered; and, as desired by the appellant himself, they were reported in the *Sanj Vartman*, a Gujarati daily newspaper, which, the appellant in his deposition admits, has circulation not only among Parsis but readers of other communities as well. In these lectures he dwelt on his own qualifications for the office of Trustee. The sum and substance of those qualifications was that he had rendered services to, and spent his life for the benefit of, the middle and lower classes of the community. He criticised in severe terms the aristocracy and the graduate class of the Parsi Community whom he called "brainless." He charged the Parsi Trustees, as they then were, with spending the moneys of the Parsi Charitable Funds "unnecessarily and unreasonably" and with so manipulating the arrangements and procedure of the elections to be held as to defeat his own chances of election, and prejudice the rights of that portion of the Parsi Community whose interests he had espoused. He charged one of the Trustees with telling a falsehood. He passed strictures on several Parsi gentlemen. Lastly, the appellant in his lectures referred to the charges and attacks, "the writing and speeches," against himself, to the agitation against him in connection "with the present burning questions," with the result, as he said in the lectures, that he had "become quite unfit in the eyes of some," and was regarded "by those elated with pride on account of wealth as a beggar." To such people his answer in the lectures was that he and those like him who did not belong to the aristocracy had "not risen by the moneys of any of the poor widows or by the moneys earned by the sweat of others," meaning that the rich Parsis whom he criticised had grown rich at the

expense and on the moneys of poor widows and hardworking people. The appellant also pointedly referred to the opinion held about him by his opponents that he was a troublesome man, fond of sending lawyer's notices in every trifling matter, and liking always to rush into litigation.

It is with reference to, and by way of comment on, these lectures that the letter complained of as libel and published in the *Jam-e-Jamshed* of the 28th January 1911 was written by the 1st respondent.

Of the three pleas on which the respondents rely in defence, in our opinion, having regard to the nature and character of the matter charged as libel, **neither the plea of privilege,** technically so called, **nor that of fair comment can be open to the respondents.** Both privilege and fair comment are two aspects of the law of privilege, with this difference that the former technically so called relates to the special rights of an individual, whereas the latter concerns the common rights of every member of the public at large: *McQuire v. Western Morning News Company* [(1903) 72 L. J. K. B. 612]. To sustain the plea of privilege in the strict legal sense, it must be shown that the matter charged as defamatory was communicated by the defendant having an interest or a moral or social duty in respect of it, to a person or persons having a correlative interest or duty. That cannot be said of the present libel. Here plainly on the facts proved and undisputed, the defendants, who as members of the Parsi community had an interest in the questions raised by the appellant's candidature for the office of trustee of the Parsi Charitable Funds and his lectures, went beyond the privilege when they published the libel to the public at large, instead of confining it to the members of the Parsi Community. The fact that the appellant had in the first instance courted general publicity and had contributed of his own accord to the circulation of his lectures among all classes of readers indiscriminately so as to make it a matter of public interest by means of the *Sanj Vartman* newspaper could not extend the rights of the respondents, so far as those rights flowed from privilege, technically so called. By publishing his lectures to the public at large, by dwelling in them on his own merits as a candidate for the office of trustee, and referring and replying to the views held about him by his opponents, he no doubt himself courted general publicity and made the matter one of public interest. In that view of the case every member of the public, Parsi or no Parsi, became entitled to comment on the conduct of the appellant and on his lectures, so far as that conduct lent itself to fair comment, having regard to the matter contained in the lectures. **But because the appellant made it a matter of public interest, open to fair comments, the respondents did not become entitled to treat as privileged communication their discussion of it in a newspaper circulated among all classes of readers besides Parsis.** Such discussion carried the matter beyond the sphere of privilege, understanding that term in the sense in which it is used in the books and in the decided cases in the English Law Reports.

Then as to the plea of fair comment, it is of the essence of it that it should be, in the first place, *comment* **on facts truly stated on a matter of public interest.** In other words, given facts which are true as regards a matter of public interest, it is open to any member of the public at large to comment on them fairly, **but if any allegation of fact imputing any act or acts of misconduct is made in the course of the comment, the libel is out of the sphere of fair comment, and can be justified only on the ground that the allegation is true.** That is the law to be collected from the cases of which we need only mention three: *McQuire v. Western Morning News Company* [(1903) 2 K. B. 100, 112.]; *Hunt v. Star Newspaper Company, Limited* [(1908) 2 K. B. 309, 320]; and *Davis v. Shepstone* [(1886) XI App. Cas. 187, 190.], where the Privy Council, Lord Herschell delivering the judgment, expounded the law as follows:—

"There is no doubt that the public acts of a public man may lawfully be made the subject of fair comment or criticism, not only by the Press, but by all members of the public. But the distinction cannot be too clearly borne in mind between comment or criticism, and allegations of fact, such as that disgraceful acts have been committed, or discreditable language used. It is one thing to comment upon or criticise, even with severity, the acknowledged or proved acts of a public man, and quite another to assert that he has been guilty of particular acts of misconduct."

Applying that test of the plea of fair comment here, **what is charged and found proved as libel is not comment but an allegation of fact,** not found in the lectures of the appellant, but an allegation made by the 1st respondent on the authority of a third party, imputing misconduct to the appellant in that he had gained prominence as a speaker at the meetings of the Parsi Anjuman by means of threats to the late Sir Jamsetjee and his co-trustees. The rest of the letter containing the libel may be in the nature of comment; but **the libel itself is not.**

The plea of fair comment, therefore, is, in our opinion, out of the way, as well as the plea of privilege, for the respondents; and their only means of escape is by proving the plea of justification and establishing the truth of the libel in substance and fact.

That plea rests on the evidence of the statement alleged to have been made by the late Sir Jamsetjee Jeejeebhoy to the 1st respondent. Beaman J. has believed the oral evidence led to show that the statement was so made. But the question is whether the statement is admissible in evidence, being that of a deceased person. Respondent's Counsel relied on Clause 3 of Section 32 of the Indian Evidence Act, which makes relevant any statement of a deceased person "when, if true, it would expose him, or would have exposed him to a criminal prosecution or to a suit for damages." Here, if the statement that the appellant had sent threats to the Trustees were true, as alleged, Sir Jamsetjee's

communication of the fact to the 1st defendant could not have exposed him either to a criminal prosecution or to a suit for damages, because it would have been protected by the exception to the offence of defamation in the Penal Code, which says that it is not defamation to publish a libel, provided it is true and the publication is for the public good. Nor could a suit for damages have lain, because the truth of the libel would have been a complete defence.

If the statement of Sir Jamsetjee as that of a deceased person is inadmissible in evidence, then there is no evidence at all in justification of the truth of the libel in substance and fact. That is Beaman J.'s view and we agree. But assume that the statement is admissible. Even then we do not think that the circumstances of the case are such that it would be wise to act upon it and hold the truth of the libel proved. Coming from a man of the high position such as the late Sir Jamsetjee occupied, his statement may be presumed to be true; but, **on the other hand, it lacks the test of cross-examination.** That defect could have been cured by the respondents calling as witnesses any of those who were co-trustees of the late Baronet and who are alive. And in this connection we cannot shut our eyes to the fact that whereas the statement had been made by Sir Jamsetjee to the 1st respondent in 1908, the respondent published it three years afterwards, in January 1911, long after Sir Jamsetjee's death in 1908. We do not say that they waited so long for an opportunity to publish the statement after Sir Jamsetjee's death, and have the benefit of it without the test of cross-examination. The fact that they published the statement when and after the appellant had offered himself publicly as a candidate for the office of trustee and posed as a champion of the middle and lower classes of Parsi Society is proof of the respondents *bona fides*. But if the appellant had as a matter of fact gained prominence at the meetings of the Anjuman by sending threats, it is probable the facts could be proved by more certain testimony than the statement of a deceased person, which, as the Privy Council put it in *Sri Raghunadha V. Sri Brozo Kishoro* (1836) L. R. 3 I. A. 154, is *prima facie* open to suspicion, because incapable of contradiction by the deceased by reason of his death. **This uncertainty gains when we find documentary evidence in the case which shows that the late Sir Jamsetjee was more or less on terms of friendship with the appellant.** In this state of the evidence, we are not prepared, sitting in appeal, to disturb Beaman J.'s finding on the issue as to justification, unless it is shown to be clearly erroneous. **We cannot say it is.**

The respondents complain, however, that in corroboration of the truth of Sir Jamsetjee's statement, they had tendered certain evidence on the plea of justification, but that Beaman J. had shut it out on the ground of inadmissibility. The evidence so tendered but refused consisted of instances of acts of the appellant more or less closely resembling the particular act of misconduct imputed to the appellant in the libel. We think such evidence was rightly excluded. **The respondents could justfy the libel as true in**

substance and in fact by proving *its truth*, not the truth of other acts and occasions, having nothing to do with the Parsi Anjuman and its trustees, unless the specific acts of misconduct charged in the libel having been proved, it was intended to show further that those acts were part of the *habitual and intentional*, not accidental, conduct of the appellant: (Section 15, Indian Evidence Act; *Makin V. Attorney-General for New South-Wales* (1894) A. C. 57,65). But no such question as the latter was raised at the trial; nor could it be raised with due regard to the nature of the libel and the pleadings in the case.

The question which has been debated with considerable force in this appeal by Counsel on either side is that of damages and costs. Beaman J. has awarded to the appellant one rupee as what he calls in the judgment "contemptuous damages," and has consequently directed the appellant to bear his own costs. Damages and costs hang together as a rule, though not always, and, in this case, if the learned Judge is right in holding that it is a proper case for "contemptuous damages," he was well warranted in the order as to costs. We confess we have wavered considerably during the hearing of this appeal on the question of damages, mainly because that is a question which the Judge had to decide, discharging the functions of a Jury. In his judgment Beaman J. more than once repeats and emphasises the nature of the discretion he had to exercise in fixing the *quantum* of damages. The rule of law is "if the case be one of libel—whether on a person, a firm, or a company—the law is that the damages are at large. It is not necessary to prove any particular damage; the Jury may give such damages as they think fit, having regard to the conduct of the parties respectively, and all the circumstances of the case." (per *Esher M. R. in South Hetton Coal Co. V. North Eastern News Association* 1894 I. Q. B. 133, 139). It is true that when a case is tried before a Judge and Jury, and the Jury fix the damages, *as they think fit*, they are sometimes not logical in their verdicts. But when a Judge sits in their place, we do not see any reason why he should trouble himself with what a fanciful Jury would have done. Beaman J.'s findings of fact, so far as they rest on proved evidence, are in appellant's favour; so far as they go against him, the findings are more or less speculative. The learned Judge has found the libel not justified. We have this undisputed fact that the appellant sued because in a way the respondents had forced his hands. In the letter containing the libel they had thrown him a challenge to sue, if he dared. And he sued. At the trial the respondents not only persisted throughout in their plea of justification but they also subjected him to a severe cross examination by means of offensive questions reflecting on his honesty and that without any basis of fact. It was suggested to him in cross-examination that he had brought the suit because "it was a paying game." Beaman J. has found that there is nothing dishonourable in the appellant's career and nothing to justify imputation on his character. The learned Judge says in his Judgment that he does not believe and is not influenced

by the evidence of general reputation led by the respondents to show that the appellant was a man of worthless character. The most that can be said is, as the learned Judge finds, that the appellant is a pugnacious man, persistent in the maintenance of his own opinions. That does not justify a libel upon him and is not a sound reason for giving him no more than comtemptuous damaages. Beaman J.'s main ground for giving them is that the imputation of the libel is not serious, and that it could not have materially lowered or injured the appellant's reputation. That may be, but we have the established fact that the appellant failed to be elected to the office of Trustee. The imputation of the libel was that the appellant sought to gain prominence as a speaker at public meetings by underhand means discreditable to a gentleman, namely, by sending threats to the organisers of those meetings. It is true that what led to the libel was the appearance of the appellant as a canditate for the office of Trustee and the highly controversial character of the lectures he had delivered in public in support of his candidature. It is also true that in those lectures he had attacked several individuals, exposing himself in respect of them to the possibility of proceedings for defamation. Those attacks may or may not have been justified. Of that there is no evidence and none could be admitted as relevant. But none of the attacks was on the respondents except one that the Parsi Panchayet had given its printing work only to the press of the 2nd and the 3rd respondents, **That was a fact on which it was open to the appellant to make his own fair comment. But it did not justify the respondents in publishing a libel falsely imputing independent acts of misconduct to him.** It cannot be said that the appellant had provoked the libel merely because he had come forward as a candidate for the office of trustee, and excited controversy by as lectures. No misconduct in and with reference to the suit itself is found against the appellant, unless it be that Beaman J. thought he was at times "defiant" while he was under cross-examination. But there is the reasonable explanation that some of the questions put imputed to him without any justification dishonesty and dishonourable conduct in matters unconnected with the libel charged.

All this rests on the certain facts of the case, facts resting on relevant evidence and found proved by the learned Judge at the trial. **The rest of his reasoning** in the Judgment under Appeal, so far as it bears on this question of damages, is **more or less conjectural,** as, for instance, that the respondents could have completely justified the libel if the appellant had sued on the whole of the letter, Ext. A, instead of picking out of it a few lines and hanging his cause of action on them. What might have been in that case is speculation in the absence of trial and evidence on that aspect of the action. Even then it might be fairly argued that the portion complained of as libel in this suit was an allegation of fact imputing acts of misconduct, standing as libel by itself, apart from the rest of the letter, as matter of

comment and, that, therefore, it was justifiable in law on no other ground than that the allegation was true in substance and in fact.

On these grounds we have come to the conclusion that it is certainly not a case for contemptuous damages. Is it then a case for aggravated damages? According to Beaman J. it would have been, in his opinion, were it not for the grounds on which he has awarded one rupee. The appellant's Counsel, **Mr. Raikes,** has contended here in appeal for aggravated damages. But as to that we may well, I think, bear in mind that the libel was published at a time and in the course of a heated controversy and public excitement in the Parsi Community. It is not easy to be precise in fixing the *quantum* of damages in such a case; but we are of opinion that the ends of justice will be sufficiently met by an award of Rs. 200 as damages to the appellant.

After this the question of costs becomes simpler and solves itself. The question of costs of the trial was no doubt in the discretion of the Judge; but that discretion had to be exercised on proper materials, *i. e.*, if there had been misconduct on the part of the appellant in commencing these proceedings or in the course of the suit, that would have been good cause for depriving him of his right to costs, even though he had won on the merits. *In Harnett V. Vise* (1880) 5 Ex. D 307, the successful plaintiff, whom the Jury awarded £ 10 damages, was not given his costs by the Judge, because, as held in appeal, the libel complained of "was not the true cause of the litigation" and the plaintiff had been actuated by a by-motive. **There is nothing of the kind here. The appellant had been challenged* by the respondents to sue; He sued and won; and they must pay his costs,** especially now that we have substantially raised the amount of damages and held that this was not a case for contemptuous damages.

Certified to be a true copy. This 29th day of January 1913.

J. N. Conway,

Senior Judge's Clerk and Commissioner for taking affidavits.

CERTIFIED COPY OF DECREE.

Dated 20th January 1913. Filed on 12th February 1913.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

In Appeal from its Original Civil Jurisdiction.

Appeal No. 20 of 1912. Suit No. 737 of 1911.

Coram Scott C. J. and Chandavarkar J. George V. etc.

N. H. E. Sukhia—*Appellant and Plaintiff vs.* P. R. Ratnagar, J. B. Murzban and P. J. Murzban..... *Respondents and Defendants.*

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* *Challenge* :—I cannot bring my long correspondence to an end without lastly alluding to one matter. Dr. Nadirshah Sukhia I know that you, Sir, are rather very fond of Vakils' notices and Counsel's opinions. Of course to meet that fondness of yours the opposite side must have a little money and sufficient leisure. Dr. Sukhia, if you are (so) minded both these things are at (your) servant's disposal. It is not that mud-fish are to be found in all holes. Doctor Saheb, if you want my address, the editor of the 'Jame' will give the same to you. I am ready in your service and truly wish that you give me such a "chance." Written by your servant Phiroze Ratnagar"

Nadirshaw Hormazdajee Edaljee Sukhia the Appellant above-named appeals against the Decree of the Honourable Mr. Justice Beaman in the above suit passed on the twelfth day of April one thousand nine hundred and twelve for the following among other reasons :—(1) That the learned Judge erred in holding that the plaintiff was only entitled to one rupee damages and should have held that he was entitled to the amount claimed by him or at any event to substantial damages (2) That the learned Judge having found that there had been nothing dishonourable in the plaintiff's career erred in Law in giving the plaintiff contemptuous damages and further erred in ordering him to bear his own costs (3) That on his findings of fact the learned Judge was in Law bound to hold that the plaintiff was entitled to substantial or at any rate to nominal damages and in any event to costs (4) That in the event of the learned Judge having a discretion to award only nominal damages he ought on his findings of fact to have given substantial damages for aggravation of the libel by the defendants' conduct before and during the hearing (5) That the learned Judge erred in thinking that there was only one imputation complained of in the libel set out in the plaint (6) That the learned Judge erred in holding that the imputation of which he held the plaintiff did complain was of a trivial character (7) That the learned Judge should have held that the said libel imputed to the plaintiff dishononrable and disgraceful conduct in his private life as well as his public life (8) That the learned Judge omitted to find on a plain and unambiguous imputation also complained of by the plaintiff in the said passage that the plaintiff was a snob who boasted of being a greater friend of the late Sir Jamsetjee than he really was and should have held that this imputation was also false and libellous and that the plaintiff was entitled to damages for it (9) That the learned Judge altogether erred in his estimate of the character and position which the plaintiff attributed to himself or which the evidence disclosed him to have (10) That the learned Judge erred in admitting evidence of and discussing the circumstances of the plaintiff's candidature for the Trusteeship of the Parsee Punchayat (11) That the said learned Judge erred in holding that the lectures delivered by the plaintiff were in any way relevant in the case and further in admitting as evidence of the lectures the newspaper reports of the same (12) That the said learned Judge forgot or misconceived the contents of the said lectures as so reported in his Judgment and erred in so far as he held that there was any thing in the lectures offensive provocative or irritating to any class of the community (13) That the said learned Judge erred in holding that it was admitted or was the fact that there was nothing libellous in the letter beyond the line and a half on which he erroneously held the action to be founded (14) That the learned Judge should have held that the rest of the letter containing the libel was irrelevant on the question of damages except so far as it could be used to show malice in aggravation of damages and that it was irrelevant whether it contained libels or

not (15) That the learned Judge erred in holding that a jury would be likely to draw the inference suggested by him or any inference from the plaintiff's only suing in respect of the passage complained of and not in respect of other imputations in the article containing the libel (16) That the learned Judge should have held that in any event a jury would have been wrong in drawing any such inference and that a verdict founded on a direction to a jury to do so would be liable to be set aside on appeal (17) That the learned Judge misconceived the Law of libel in implying that nothing which was not libellous could cause harm to reputation or injury to feelings (18) That the learned Judge erred in holding that the plaintiff had carefully or at all sought to restrict the battle-ground against the defendants (19) That the learned Judge erred and misconceived the law and the pleadings in the case in holding that the plaintiff could not be entitled to substantial damages without going into the Witness Box to give evidence (20) That the learned Judge erred in deciding that the plaintiff must go into the witness box and give evidence if he persisted in his claim for substantial damages (21) That the learned Judge erred in conjecturing as to what the attitude of the defendants was on matters not before the Court and as to which there was no evidence before him (22) That the said learned Judge erred in admitting evidence to prove that the late Sir Jamsetjee did make the statement attributed to him in the libel and should have held that such evidence was irrelevant (23) That the learned Judge if right in admitting the evidence last mentioned erred in holding it proved that the late Sir Jamsetjee did make the statement attributed to him in the libel (24) That the learned Judge erred in conjecturing as to what was the first defendant's object in writing and publishing the libel complained of and should have held that such intention was altogether irrelevant to the questions in the case (25) That the said learned Judge erred in holding that there was a substance of the libel other than its form (26) That the learned Judge in purporting to look into the substance of the libel went into the very questions as to which he had excluded evidence and founded his judgment on conjectures as to what would have been the result of the evidence he had excluded if admitted (27) That the learned Judge erred in founding his Judgment on answers of the plaintiff in cross examination to questions which he afterwards held to be irrelevant and as to which he refused to allow the plaintiff to be re-examined and to give his evidence (28) That the learned Judge erred in holding that the substance of the libel was the plaintiff's conduct at public meetings and should have held that the substance of it was the imputation to the plaintiff of dishonourable and disgraceful conduct in sending private threats as to what he would do if not allowed to take a certain prominent part in public meetings (29) That the learned Judge if right in holding that the substance of the libel was an attack on the conduct of the plaintiff at public meetings erred in excluding evidence as to such conduct and should have

admitted evidence in full as to the same. (30) That the learned Judge further erred in founding his judgment on conjectures as to the result of such evidence as he had excluded if admitted or as to the result of evidence not before him. (31) That the learned Judge erred in holding that the form of the imputation on which the action was in part founded made it impossible or difficult to justify if true (32) That the learned Judge should have held that the only reason the imputation could not be justified was that it was entirely untrue (33) That the learned Judge misconceived the law as to the kind of evidence of character admissible in reduction of damages and should have held that the only evidence admissible for such a purpose was evidence that the plantiff was a person of such reputation that no libel could damage him (34) That the learned Judge erred in holding that the defendants *bona-fide* published the said libel (35) That the finding of the learned Judge as to *bonafides* is inconsistent with his finding of express malice against the defendants (36) That the learned Judge erred in holding that he was entitled to consider the manner in which the plaintiff had or he supposed the plaintiff had expressed himself towards persons not parties to the action in estimating the damages to be awarded to the plaintiff (37) That the learned Judge erred in putting to witnesses called as to reputation the very question he had himself to answer in the case (38) That the learned Judge erred in finding issue two in the affirmative and issue nine in the negative and should have held that issue two was irrelevant or should have found it in the negative and should have held that issue nine did not arise under his findings on issues four and eight (39) That the decree of the learned Judge, is against law, equity and good conscience and the evidence in the case and should be reversed with costs and the first respondent Pheroze Ruttonji Ratnagar abovenamed objects under Order 41 Rule 22 of the Civil Procedure Code to the Decree of the Honourable Mr. Justice Beaman in the above Suit passed on the twelfth day of April one thousand nine hundred and twelve on the following grounds (1) That the learned Judge erred in excluding evidence as to the particulars numbered 1, 2, 3, 4, 6 and 8 in the list filed by the defendants on the twenty sixth day of March one thousand nine hundred and twelve as also the further particular filed on the twenty ninth day of March one thousand nine hundred and twelve (2) That the learned Judge erred in excluding the evidence of the second defendant as to the conversation he had with the late Sir Jamsetjee Jeejeebhoy in connection with the part the plaintiff played in meetings of the Parsi Anjuman convened by the Trustees of the Parsi Punchayet (3) That the learned Judge ought to have held that the words complained of were true in fact and in substance (4) That the learned Judge ought to have held that the letter of the twenty fifth (?sixth) day of January one thousand nine hundred and eleven containing the words complained of was published on a privileged occasion (5) That the learned Judge ought to have held that the words com-

plained of were fair comments on a matter of public interest namely the candidature of the plaintiff for a seat on the Board of Trustees of the Parsi Punchayat (6) That the learned Judge ought to have dismissed the Appellant's suit and ordered him to pay the Respondent's costs of the suit and the second and the third Respondents Jehangir Byramji Murzban and Phirozshaw Jehangir Murzban abovenamed object under Order 41 Rule 22 of the Code of Civil Procedure to the Decree of the Honourable Mr. Justice Beaman in the above suit passed on the twelfth day of April one thousand nine hundred and twelve on the following grounds (1) That the learned Judge erred in excluding evidence as to the particulars numbered 1, 2, 3, 4, 6 and 8 in the list filed by the defendants on the twenty sixth day of March one thousand nine hundred and twelve as also the further particular filed on the twenty ninth day of March one thousand nine hundred and twelve (2) That the learned Judge erred in excluding the evidence of the second defendant as to the conversation he had with the late Sir Jamsetjee Jijibhoy in connection with the part the plaintiff played in meetings of the Parsi Anjuman convened by the Trustees of the Parsi Panchayat (3) That the learned Judge ought to have held that the words complained of were true in fact and in substance (4) That the learned Judge ought to have held that the letter of the twenty fifth (? sixth) day of January one thousand nine hundred and eleven containing the words complained of was published on a privileged occasion (5) That the learned Judge ought to have held that the words complained of were fair comments on a matter of public interest namely the candidature of the plaintiff for a seat on the Board of Trustees of the Parsi Panchayat (6) That the learned Judge ought to have dismissed the Appellant's suit and ordered him to pay the Respondents' costs of the suit and the Appeal having been called on for hearing on the sixth, the seventh, the ninth, the tenth, the fourteenth and sixteenth days of January Instant the Appellant and the first Respondent Phiroze Ruttonji Ratnagar and and the second and the third Respondents Jehangir Byramji Murzban and Phirozshaw Jehangir Murzban appearing respectively by Advocates and upon hearing the said Advocates and upon reading the memorandum of Appeal and the cross-objections filed herein the decree made by the Court below in the above Suit on the twelfth day of April one thousand nine hundred and twelve the notes of evidence taken and the exhibits put in at the hearing of the above Suit This Appellate Court took time to consider its Judgment and the Appeal being this day called on for Judgment This Appellate Court doth vary the said Decree dated the twelfth day of April one thonsand nine hundred and twelve and doth order that the Respondents do pay to the Appellant the sum of Rupees two hundred as and by way of damages and the costs of the above suit and of this Appeal and of the said cross-objections when taxed and noted in the margin hereof and this Appellate Court doth further order that the cross-objections filed herein be and they are hereby dismissed WITNESS SIR BASIL SCOTT Knight

Rs.
13,822-3-4

Chief Justice at Bombay aforesaid this twentieth day of January one thousand nine hundred and thirteen. By the Court

Seal. P. B. Malabari. (12-2-1913.) A. M. Kajiji, Prothonotary.

Certified to be a true copy. The 12th day of February 1913.

Seal. P. B. Malabari, for Prothonotary.

Note.—The Respondents-Defendants petitioned for leave to appeal to the Privy Council but it was refused by the Appeal Court.

Certified copy of the Judges Order of 17-3-1913, filed on 24-4-1913.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

O. O. C. J. Appeal No. 20 of 1912. Suit No. 737 of 1911.

Coram Scott C. J. and Chandavarkar J. George V, etc.

N. H. E. Sukhia —*Appellant and Plaintiff vs.* P. R. Ratnagar, J. B. Murzban and P. J. Murzban—*Respondents and Defendants.*

UPON reading the petition of the abovenamed Respondents for leave to appeal to His Majesty in Council filed on the tenth day of March instant and upon the matter being mentioned to the Court this seventeenth day of March one thousand nine hundred and thirteen by Mr. Inverarity Advocate for the abovenamed Appellant who waived service of Notice herein and who was not allowed to address the Court and upon hearing Mr. Davar Advocate for the abovenamed Respondents and Petitioners Phiroze Ruttonjee Ratnagar, Jehangir Byramjee Murzban, and Phirozshaw Jehangir Murzban (the Advocate for the Appellant not being called upon to reply) and upon reading the notice issued herein. It is ordered that the said Notice service whereof was waived as aforesaid be and it is hereby discharged and that the Respondents do pay to the Appellant his costs of the said petition and of this Order when taxed and noted in the margin hereof Witness Sir Basil Scott Knight Chief Justice at Bombay aforesaid this seventeenth day of March one thousand nine hundred and thirteen.

Rs. 376-6-0

Seal. H. H. Wadia. By the Court

This 24th day of April 1913. H. H. Wadia, for Prothonotary.

Certified to be a true copy.

Seal. This 24th day of April 1913. H. H. Wadia for Prothonotary.

NOTE.—The Respondents-Defendants petitioned to the Privy Council for special leave to appeal but it was refused.

PETITION FOR SPECIAL LEAVE TO APPEAL.

In the Privy Council.

ON APPEAL.

FROM THE HIGH COURT OF JUDICATURE AT BOMBAY.

BETWEEN

JEHANGIR BYRAMJI MURZBAN
PHIROZSHAW JEHANGIR MURZBAN and
PHIROZE RUTTONJI RATNAGAR ... ... *Appellants*

AND

NADIRSHAW HORMAZDEJEE SUKHIA ... *Respondent*

To The King's Most Excellent Majesty in Council.

THE HUMBLE PETITION OF THE ABOVENAMED APPELLANTS.

SHEWETH as follows:—

1. That this Petition arises out of an action for libel, claiming Rs. 9,000 by way of damages, filed in the High Court of Judicature at Bombay by the Respondent against the Petitioners in respect of an article which appeared in the "Jame-e-Jamshed" newspaper over the signature of the third Petitioner. The first and second Petitioners are respectively the proprietor and the editor publisher and printer of the said newspaper which is one of the principal Gujarati newspapers in Bombay, circulating chiefly amongst the Parsi community to which all the parties belong.

2. That the alleged libel which was a part only of a long article in the form of a letter was in terms of which the following is the translation as set out in the Respondent's plaint:—

"But wait: when that Gentleman now and then talks "about the late the Honourable the fourth Sir Jamsetjee with "a smack of his lips every time, he wants to show some such "thing that that righteous deceased person was Doctor "Sukhia's personal friend and sympathetic admirer. Under "the present circumstances, on being reminded of him, I "cannot resist the temptation of noting down an incident here. "At one time when I was coming down from Matheran with "a party of my certain friends, this noble gentleman met me "on the Parel (? Narel) Station. I asked this gentleman a sim-"ple and direct question as follows:—Sir, now-a-days whenever "meetings of the Anjuman are held, why do men of certain type "only get up to put or support oppositions (? propositions). Are "there not in the Community more worthy gentlemen and "better-known leading Shethias? Immediately that frank "Shethiya gave a reply as follows, and the sound coming "from the throat of the deceased on that day still rings in my "ears. 'What can we do? Ratnagar. If these people are "not allowed to speak then they send us threats that they would "go to the meeting and create disturbances (and) would "not allow (its) work to be proceeded with.' During the "above conversation between both of us, my two (or) three "friends were standing at a distance from which they "could hear our conversation, and since then on num-"erous occasions I have already spoken of this conver-"sation at different places to different responsible per-"sons. What I say is quite true and honest, and now I "leave it to Doctor Sukhia himself as well as to my readers as "to what conclusion to draw from it. This much I shall openly "say, that with regard to the attempts which Dr. Sukhia "continues to make to take a leading part in almost every "meeting of the Anjuman the thoughtful class of the com-"munity always puts the question with genuine wonder as "follows:—'What is our Community barren that mediocre

"individuals like Dr. Sukhia continue to come forward in "all matters to take a lead there (*i. e.*) in the meetings?'"

3. That the imputation complained of by the Respondent and in respect of which he claimed the said sum of Rs. 9,000/- as damages was that "By the said words the (third Petitioner) meant "and intended to suggest to the readers of the said paper that the "(Respondent) had frequently threatened the late Sir Jamsetjee "Jejeebhoy (fourth Bart.) and other leaders of the Community "concerned in the convening of the Anjuman (the general "assembly of the said Community) that he would create distur- "bances at the Anjuman meetings and would prevent business "from being proceeded with therein unless (the Respondent) was "allowed to make speeches and to tal e a leading part in the said "Anjuman meetings."

4. That the Petitioners did not deny that the passage in question was intended to refer to the Respondent, but they amongst other defences denied that the words used were defamatory and pleaded that if they were the occasion was privileged. They also contended that in any event the Respondent had suffered no damages. Express malice was charged by the Respondent and an issue was raised thereon at the trial of the said suit, but the trying Judge found against the Respondent on this point and stated in his Judgment that he had not the least doubt as to the *bona fides* of all the three Petitioners. The finding upon this point was not disturbed in Appeal.

5 That the said article was written and published under the following circumstances:—

In the month of January 1911 the Respondent came forward as a candidate for the Office of a Trustee of the general Charitable Funds of the said Community which are of very great value and the Trusteeship of which is regarded as an Office of high honour amongst Parsis in Bombay. The Respondent posed in his said candidature as the champion of the middle and lower classes of the said Community and as antagonistic to what may be described for convenience as the aristocratic party to which all the then existing trustees belonged. With a view to his said candidature the Respondent convened public meetings of the Parsi Community in Bombay and delivered public addresses to them in which he criticised the party opposed to him in severe terms, and brought various charges, some of them of an offensive nature, against the existing Trustees. He also pointedly referred to the opinions held about him by his opponents that he was a troublesome man, fond of sending lawyers' notices in every trifling matter and liking always to rush into litigation. Before delivering the said addresses the Respondent advertised the said meetings in the local newspapers, and invited reporters to be present thereat, and in particular wrote to the first Petitioner asking him to report the said addresses in his said newspaper (the "Jam-e-Jameshed") on the ground

that the matters concerned were of public importance and of great moment to the Parsi Community. The said addresses were reported at length in one of the Gujarati newspapers of Bombay called the "Sanj Vartman" which supported the Respondent's candidature and the cirulation of which was like that of the "Jame-e-Jamshed" principally amongst Parsis.

6. That the matter of the Respondent's said candidature was admittedly a question of great public interest in the said Community, it being the first attempt to obtain so-called popular representation on the said Board of Trustees, certain seats on which had recently for the first time been thrown open to election under a scheme of management framed by the said High Court a short time before.

7. That the article complained of by the Respondent was published on the 26th (? 28th) January 1911, after and by way of comment upon the matters in paragraph 5 hereof referred to. A summary of the first of the Respondent's said addresses had previously appeared in the "Jame-e-Jamshed" but the subsequent ones had not been reported therein.

8. That at the trial of the said action, which was heard in the first instance by a single Judge of the said High Court, the Petitioners contended *inter alia* that under the above circumstances the Respondent had impliedly incited discussion of his qualifications as a candidate for the said office in the first Petitioner's newspaper, and that the matter being admittedly one of public interest to the Parsi Community who formed by far the larger number of the readers of the said paper, the publication of the passage complained of, even if defamatory, was privileged. The learned Judge found as a fact that the statement referred to in the said passage was made by the late Sir Jamsetjee Jeejeebhoy who was admitted by the Respondent in his evidence to have been the leader of the said Community, and a man of great integrity and honesty of of purpose, who would never tell an untruth, and whose opinion was always valued by Parsis.

9. That the said suit was heard at great length by the trying Judge, who, putting himself in the position of a jury (as stated by him in his judgment), awarded to the Respondent what he characterised as the "contemptuous damages of one rupee" and in the discretion vested in him by S. 35 of the Code of Civil Procedure (Act V. of 1908) ordered both sides to pay their own costs.

10. That with reference to the issue, whether the words complained of were defamatory, which the learned Judge found in the affirmative the following passage occurs in his judgment:—

"In itself, I do not think that the published charge "(having regard to what Dr. Sukhia has told us of himself "and his mental attitude towards his opponents in public "life) expresses anything which would very materially injure "or lower his reputation as a public man by the state- "ment that he threatened Sir Jamsetjee if not allowed to "speak he wants to create a disturbance. 'Creating a dis- "turbance' in the mouth of a gentleman like Sir Jamsetjee

"probably meant no more than that he would insist upon "speaking out of his turn and 'obstructing business' no more "than that he would go on speaking interminably. I really "do think that a man like Dr. Sukhia who takes so pro- "minent a part in certain walks of public life in this City "and whose career appears to have been by his own descrip- "tion of it a stormy one although not in any sense that I "can see dishonourable, ought not to be so thin-skinned. "He is the kind of man, as his Counsel described him, who "insists on adhering to his own opinions, and possibly, "though this is not his Counsel's description, enforcing "them in season and out of season upon those who did not "share them. He is quite evidently a person of great cour- "age and pugnacity, and in the role he has chosen to adopt, "that of a demagogue and leader of the lower classes, he "may very well have been a real terror to a quiet and "retiring gentleman like the late Sir Jamsetjee."

The Petitioners submit that having regard to the interpretation of the words adopted by the learned Judge (which was, as the Petitioners submit, the fair and reasonable interpretation thereof), and his view of the Respondent's attitude to public affairs, he ought to have held that the words complained of were not defamatory.

11. That the learned Judge further held against the Petitioners that the occasion of the publication of the said article was not privileged. The Petitioners submit however that this determination was wrong for the reasons set out in paragraph 8 hereof.

12. That the Respondent appealed against the decision of the Court of first instance and the Petitioners filed cross objections under Order 41, Rule 22, of the Code of Civil Procedure, objecting *inter alia* that the said learned Judge ought to have held that the occasion of the said publication was privileged.

13. That the said Appeal came on for argument before a bench of two Judges of the said High Court who delivered a written Judgment therein on the 20th January 1913.

14. That at the hearing of the said Appeal Counsel for the Petitioners submitted that the words complained of were not defamatory, but the learned Judges refused to hear him upon this point on the ground that the same was not specifically taken in the memorandum of cross objections, and leave to amend the same was refused. The Petitioners submit that the point having been raised and considered at length in the Court of first instance, and seeing that it went to the root of the case they ought to have been allowed to raise it on appeal.

15. That with regard to the question of privilege which the Petitioners submit is the most important point of the case in this Petition, the learned Judges were of opinion that the privilege which would otherwise have attached to the publication by reason of the general interest of the Parsi Community in the questions discussed in the said article was lost by publication in a newspaper which circulated in part outside the said Community.

The views of the Court upon this point are expressed in the following extract from their judgment—

"To sustain the plea of privilege in the strict legal sense, "it must be shown that the matter charged as defamatory "was communicated by the defendant having an interest or "a moral or social duty in respect of it, to a person or persons "having a correlative interest or duty. That cannot be said "of the present libel. Here plainly on the facts proved and "undisputed the Defendants who as members of the Parsi "Community had an interest in the questions raised by the "Appellant's candidature for the Office of Trustee of the "Parsi Charitable Funds and his lectures went beyond the "privilege when they published the libel to the public at large, "instead of confining it to the members of the Parsi Com-"munity. The facts that the Appellant had in the first "instance courted general publicity and had contributed of "his own accord to the circulation of his lectures among all "classes of readers indiscriminately so as to make it a matter "of public interest by means of the 'Sanj-Vartaman' news-"paper could not extend the rights of the Respondants so far "as those rights flowed from privilege, technically so called. "By publishing his lectures to the public at large, by dwell-"ing in them on his own merits as a candidate for the Office "of Trustee, and referring and replying to the views held "about him by his opponents, he no doubt himself courted "general publicity and made the matter one of public interest. "In that view of the case every member of the public, Parsi "or no Parsi, became entitled to comment on the conduct of "the Appellant and on his lectures, so far as that conduct "lent itself to fair comment having regard to the matter con-"tained in the lectures. But because the Appellant made it "a matter of public interest open to fair comment the Res-"pondents did not become entitled to treat as privilege com-"munication their discussion of it in a newspaper circulated "among all classes of readers besides Parsis. Such discus-"sion carried the matter beyond the sphere of privilege, un-"derstanding that term in the sense of which it is used in the "books and in the decided cases in the English Law Reports."

16. That the facts as to the circulation of the said newspaper as proved by the evidence on the record are that out of about 4800 daily subscribers about 3,500 are Parsis. The "Sanj Vartman" the other newspaper which was in effect the organ of the Respondent at the time of the said discussion had also admittedly a similarly mixed circulation.

17. That the Petitioners submit that the law as to privileged publications laid down by the said judgment is not correct and that the privilege is not exceeded provided the means adopted for communication of the matter in question to the persons interested are under the circumstances reasonable and not such as to suggest a malicious purpose or an intended abuse of the privilege. The Petitioners submit that upon the facts stated in the said judg-

ment and proved in the case the said publication ought to have been held to be privileged.

18. The Petitioners would also venture humbly to point out that in a City of mixed Communities like Bombay the circulation of no newspaper can be confined absolutely to the Community for whose reading it is primarily intended, and that if the judgment of the said Appeal Court stands it will be impossible for those responsible for the conduct of any newspaper to publish therein any matter which would ordinarily be privileged however important unless every individual who may purchase the said paper to whatever community he may belong is interested therein. The Petitioners also submit that the said judgment is erroneous in the particular case in as much as the Respondent not only chose a similar medium for the communication to the Community of his own attacks upon his opponents but impliedly invited the first Petitioner to make his paper the forum of the said discussion.

19. That on the question of damages the learned Judges of the Appeal Court disagreed with the finding of the Court of first instance and awarded to the Respondent the sum of Rs. 200. They also over-ruled the learned Judge's order as to costs and ordered the Petitioners to pay the Respondent's costs throughout. The Petitioners submit that the interference of the said Appeal Court with the finding as to damages and with the discretion of the Court of first instance as to costs was unjustifiable and was in no way warranted by the evidence on the record.

20. That being dissatisfied with the said Judgment the Petitioners applied to the said High Court for a certificate entitling them to appeal therefrom to His Majesty in Council but the said application was refused.

21. That under the circumstances above set out, the Petitioners humbly submit that the said Judgment was wrong both in law and in fact and that great injustice will be done to the Petitioners if the same is allowed to stand without further consideration of the questions involved by His Majesty in Council.

22. That the Petitioners also humbly submit that important points of law of general interest arise in the case, namely, whether the privilege attaching to the publication of a matter of general interest to a large and important community amongst whom a newspaper circulates widely and for whose reading it is primarily intended, is lost merely by reason of its incidental publication therein to other persons not belonging to such community, and generally as to the law of privilege affecting newspapers in India under such circumstances as those disclosed in the present case.

YOUR PETITIONERS therefore most humbly pray that Your Majesty in Council will be pleased to order that the Petitioners shall have special leave to appeal from the said judgment of the High Court dated the 20th January 1913 and that the said Court may be ordered to transmit forthwith the transcript of the proceedings and evidence in the said action to the Privy

Council Office or for such other Order as to Your Majesty in Council may seem just and proper.

AND your Petitioners will ever pray etc.

T. L. Wilson & Co., 5 Victoria Street, London, S. W., Appellants' Solicitors.

IN THE PRIVY COUNCIL.

Council Chamber, Whitehall.
June 13th 1913.

Present

The Rt. Hon. The Lord Chancellor.
The Rt. Hon. Lord Shaw of Dunfermline.
The Rt. Hon. Lord Moulton.
The Rt. Hon. Lord de Villiers.
The Rt. Hon. Sir Samuel W. Griffiths.

Between

JEHANGIR BYRAMJI MURZBAN & OTHERS

and

NADIRSHAW HORMUZJI SUKHIA.

From The High Court of Judicature at Bombay.

(Transcript of the Shorthand Notes of Marten Meredith & Co. 8 New Court, Carey Street W. C.)

SIR ROBERT FINLAY :—MY Lords, this is an APPLICATION for Special leave to Appeal from a decision of the High Court of Bombay. The action is one of libel, and the circumstances are fully stated in the Petition. (*vide supra pp.* 48-55.)

It appears that the Plaintiff in the action of libel had been taking an active part in the affairs of the Parsi Community at Bombay, and was desirous of being chosen as one of the Trustees of the Parsi Community, which would put him in a very leading position. He had made a good many speeches, to which the Press had been invited, and he had, as I understand it, expressed himself in rather strong terms with regard to other persons who were in any way connected with this question. Under these circumstances this alleged libel appeared in a Paper published, in Gujarati, in Bombay, which circulates mainly among the Parsi Community-not entirely, of course, because every Newspaper must be read by other persons.

The case raises what is really a very important question of general importance, which is this. The Court of Appeal found that the occasion was privileged in as much as the Plaintiff himself had challenged public discussion, but they said (I will read the passage presently) that they thought that the privilege was taken away because the libel appeared in a Newspaper which was not read exclusively by Parsis, but, to the extent of about one-fifth, I think, of the circulation, was read by persons of other persuations.

LORD MOULTON :—Was it shewn that the Defendant had put it into the Paper ?

SIR ROBERT FINLAY :—Yes, he sent it to the Newspaper for publication ; and the action was brought against the Proprietor, I think, the Editor, and writer of the letter. The third Defendant

is the writer of the letter. Now my Lords, the translation of the letter is set out in the second paragraph of the Petition. I hope it read much better in Gujarati than it reads in the translation of the Government translator in the second paragraph of the Petition. The second paragraph of the Petition says:—"That the alleged libel which was a part only of a long article in the form of a letter was in terms of which the following is the translation as set out in the Respondent's Plaint:—But wait: When that gentleman"—that is the Plaintiff in the action, Sukhia—"now and then talks about the late the Honourable the fourth Sir Jamsetjee with a smack of his lips every time, he wants to shew some such thing that that righteous deceased person was Dr. Sukhia's personal friend and sympathetic admirer. Under the present circumstances, on being reminded of him, I cannot resist the temptation of noting down an incident here. At one time when I was coming down from Matheran with a party of my certain friends this noble gentleman met me on the Parel (? Narel) Station." That was the deceased Sir Jamsetjee. "I asked this gentleman a simple and direct question as follows:—Sir, nowadays whenever meetings of the Anjuman are held, why do men of certain type only get up to put or support oppositions (? propositions)? Are there not in the Community more worthy gentlemen, and better known leading Shethias?" Shethias are leading men of the Parsi Community. "Immediately that frank Sethia"—that is Sir Jamsetjee—"gave a reply as follows, and the sound coming from the throat of the deceased on that day still rings in my ears." "What can we do? Ratangar"—Ratangar is the writer—"If these people are not allowed to speak then they send us threats that they would go to the Meeting, and create disturbances."

THE LORD CHANCELLOR:—I have read this through. Can you really say that this is a case in which the Judicial Committee of the Privy Council should interfere? It was tried by a single Judge, who awarded the Respondent what he characterises as the "contemptuous damages of one rupee." The Respondent appealed, and the Appeal Court disagreed, and gave the Respondent Rs. 200 damages?

SIR ROBERT FINLAY:—And the whole of the costs.

THE LORD CHANCELLOR:—It does not look as if they considered it very important.

SIR ROBERT FINLAY:—The only ground on which I can put it is this: that they based their judgment upon a very far reaching principle: that the privilege is taken away because the Newspaper is read by persons not belonging to the Community which is interested in the matter.

THE LORD CHANCELLOR:—That is a matter to be tried on some greater occasion than this, involving Rs. 200. Two trials are as much as a case of this kind is entitled to.

LORD MOULTON:—And both against you.

SIR ROBERT FINLAY :—If it had rested on the decision of the Judge who heard the case we should not quarrel with it. He gave one rupee, and no costs; but then the Court of Appeal on this erroneous ground gives Rs. 200, and all the costs.

THE LORD CHANCELLOR :—It is not a case of sufficient importance.

LORD MOULTON :—Both support the negative of privilege.

SIR ROBERT FINLAY :—Yes; the Court of first instance proceeded on the assumption that there was no privilege. The Court above said the occasion was privileged but it is taken away by the fact that the Newspaper circulates amongst others.

LORD MOULTON :—Well, it is not privileged, and you have two decisions against you. I must say that it is a very trumpery matter.

SIR ROBERT FINLAY :—After what the Lord Chancellor has said I take it it would not be right for me to further press it upon Your Lordships.

Privy Council Office, Whitehall S. W.
I certify this to be a true copy.
Seal of the Privy Council.
J. C. Ledlie, Deputy-Clerk of the Council.
23*rd September* 1913.

AT THE COURT AT BUCKINGHAM PALACE.

The 24th day of June 1913.

Present

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 13th day of June 1913 in the words following *viz.* :—

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Jehangir Byramji Murzban, Phirozeshaw Jehangir Murzban and Phiroze Ruttonji Ratnagar praying for special leave to appeal to Your Majesty in Council from a Decree of the High Court of Judicature at Bombay dated the 20th day of January 1913 and pronounced in the matter of a Suit brought in the said High Court by Nadirshaw Hormazdajee Sukhia (Plaintiff) against the Petitioners (Defendants).

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the said humble Petition into consideration and having heard Counsel in support thereof their Lordships do this day agree humbly to report to Your Majesty as their opinion that the said Petition ought to be dismissed."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed, obeyed and carried into execution.

Whereof all persons whom it may concern are to take notice and govern themselves accordingly.

ALMERIC FITZROY.

Thank-offering.—The Plaintiff and Appellant—Dr. Sukhia—is grateful to Providence—Dadar Ahura Mazda—for the final success, as anticipated, fully appreciates the justice rendered by the Appeal Court, and tenders his warmest thanks to all his Witnesses, Counsel and Attorneys, particularly to painstaking Counsel, Mr. Raikes who almost single-handed conducted most conscientiously and ably both the Suit and the Appeal and also to the Attorney, Mr. Kanga who worked so assiduously and faithfully all throughout.

NOTE.—The chief weapon of defence on which the defendants, through their attorneys, seem to have relied was offensive and irrelevant questions put to the plaintiff by their Counsel (Messrs. Wadia & Davar), which instead of serving their cause served the plaintiff's, and for which the Plaintiff's Counsel (Mr. Raikes) had to remark in the open Court:—"And I say that this is only a way of getting the case tried by Newspapers, not by the Court." "I hear nothing but allegations of counsel."

On several occasions **the Court**, (Beaman J.) had to make the following remarks:—

"Is it not going rather far?" "This could not possibly be relevant." "I think that should not be gone into, it is of an indecent character." "I think that that must stop there." "These questions must not be put." "I think both question and answer are objectionable." "That is going too far for too little." "I refuse to allow you." "All this is irrelevant. You must not forget your professional obligation. You must conduct the case according to law." "That is utterly irrelevant." "I wish that no more personalities are introduced." "I do hope the learned gentlemen would keep clearly in mind the distinction between evidence of general reputation and evidence of particular instances." "You must bear in mind the distinction between justification and evidence of general reputation in mitigation of damages."

Those who laugh last, laugh best.

NOTE. 1.—Three days after Beaman J. delivered his Judgment Mr. J. B. Petit, who was a witness of the defendants had the temerity to write to the Plaintiff as follows:—

"Will you be so good as to contribute to the Hos. (pital) Fund, the amount of the damages (Re. 1.) you have got?"

15-4-12. (Sd.) J. B. Petit.

NOTE. 2.—Soon after Beaman J.'s judgment, the following appeared in the "*Gup-Sup*" of May 1912 (Defendant No. 3 is the Editor thereof):—

"A Comparison.—Have you ever fought a great expensive suit in the High Court? God forbid that you experience such a day?

But know:—(a picture of a chariot and four driven at a rapid pace follows).

Before the commencement of the suit you entertain some such thoughts (as shown above), while—

(A picture showing the *overturning* of the Chariot follows).

At the end of the suit you have a knowledge of some such experience (as shown above)."

No commentary is needed after the "*Crowning Glory*" in the Privy Council.

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